of Trade and Transportation, relative to bill S. 2262—to the Committee on Interstate and Foreign Commerce.

By Mr. RYAN: Petition of the Manufacturers' Association of New York, relating to forging trade-marks—to the Committee on Patents.

Also, petition of United Harbor No. 1, American Association of Masters and Pilots of Steam Vessels, opposing bill H. R. 7298—to the Committee on the Merchant Marine and Fisheries.

By Mr. WANGER: Petition of Washington Camp, No. 502, Patriotic Order Sons of America, of Norristown, Pa., for restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. WACHTER: Paper to accompany bill for relief of James W. Fowler—to the Committee on Invalid Pensions.

By Mr. WARNOCK: Petition of the York Township Protective Association, favoring bill H. R. 13778—to the Committee on Interstate and Foreign Commerce.

By Mr. WEISSE: Paper to accompany bill for relief of Nathaniel Cooper—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of Andrew Schmidt—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of Julius Beyer—to the Committee on Invalid Pensions.

Also, petition of Jacob Binder et al., favoring maximum output of 2,500 barrels of beer on special tax of $50 per annum—to the Committee on Ways and Means.

SENATE.

WEDNESDAY, *February 8, 1905.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. KEAN and by unanimous consent, the further reading was dispensed with.

TRANSFER OF CLERKS IN POST-OFFICE DEPARTMENT.

The PRESIDENT pro tempore laid before the Senate a communication from the Postmaster-General, transmitting, in response to a resolution of the 27th ultimo, a letter from the Acting Second Assistant Postmaster-General and a copy of a memorandum from the Acting Fourth Assistant Postmaster-General, relative to the number of clerks in the Post-Office Department performing other work and who will be affected by new legislation; which, with the accompanying papers, was referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

STEAMER "DAVENTRY."

The PRESIDENT pro tempore laid before the Senate a communication from the Acting Secretary of Commerce and Labor, transmitting additional information in the matter of an application for the registry of the foreign-built steamer *Daventry;* which was referred to the Committee on Commerce, and ordered to be printed.

ST. JOHNS RIVER (FLORIDA) IMPROVEMENT.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of War, transmitting, in response to a resolution of the 31st ultimo, estimates prepared by Capt. Francis R. Shunk, Corps of Engineers, the officer in charge of the improvement of St. Johns River, relating to the cost of obtaining a depth of 24 feet of water in that river, etc.; which, with the accompanying paper, was referred to the Committee on Commerce, and ordered to be printed.

ELECTORAL VOTES.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of State, transmitting the final ascertainment of electors for President and Vice-President for the State of Nevada; which, with the accompanying paper, was ordered to be filed.

ENROLLED BILLS SIGNED.

A message from the House of Representatives, by Mr. C. R. MCKENNEY, its enrolling clerk, announced that the Speaker of the House had signed the following enrolled bills and joint resolution; and they were thereupon signed by the President pro tempore:

S. 6450. An act to amend an act entitled "An act authorizing the Winnipeg, Yankton and Gulf Railroad Company to construct a combined railroad, wagon, and foot-passenger bridge across the Missouri River at or near the city of Yankton, S. Dak.;"

H. R. 18280. An act to extend the western boundary line of the State of Arkansas;

H. R. 18523. An act making an appropriation for fuel for the public schools of the District of Columbia; and

H. J. Res. 185. Joint resolution authorizing and directing the Director of the Census to collect and publish additional statistics relating to cotton.

PERSONAL EXPLANATION.

Mr. KEARNS. Mr. President, I rise to a question of personal privilege.

In the first vote on the amendment of the Senator from California [Mr. BARD] last evening I voted "nay" in a distinct manner. It appears the clerks misunderstood me and I was numbered among those favoring the amendment. My colleagues called my attention to the error and I was on the point of correcting it when it was suggested I could do so on the vote to concur in the amendment before the final passage of the bill, in case the amendment should be adopted. This course I pursued.

The seriousness of this matter did not impress itself upon me until this morning, when I read in the public press the statement that I had voted for the amendment in order that I might force the managers of the bill to accept my amendment ceding the Arizona strip to Utah. This I deny in the most positive manner. Such a proceeding I would not countenance nor be a party to. My word had been given the managers of the bill that I would support their measure, and I would not have played them false for the whole Territory of Arizona.

If this be the proper time, Mr. President, I desire to have the record corrected as far as it relates to my vote upon the amendment of the Senator from California in accordance with this statement.

Mr. NELSON. Mr. President, I desire to state in this connection that I was sitting here in my seat, and I heard distinctly the Senator from Utah [Mr. KEARNS] vote "nay" on that proposition, as he has just stated, and I think every Senator in this row can vouch for the same thing. I was very much surprised when the Secretary read his vote as voting in the affirmative, as I heard him distinctly vote in the negative.

Mr. CLARK of Wyoming. Mr. President, during the time of that occurrence I sat as near the Senator from Utah as I sit now, within 4 feet. His vote was given "nay," distinctly, as he has stated.

Mr. FORAKER. Mr. President, merely to show that the recording clerk was not at fault, in my opinion, I should state that I was sitting at my desk keeping a tally of the vote, and when the Senator from Utah announced his vote I wrote his name down as voting "yea." It was a clear vote of "yea" as it sounded in this part of the Chamber. After I learned that there was a controversy about it, I made inquiry of a number of Senators sitting around me, and every one who expressed himself on the subject expressed himself as understanding that the vote was "yea."

Of course, if the Senator says it was "nay," we accept his statement about it; but the recording clerk is not at fault, I am sure, if the sound came to him as it did to this part of the Chamber. Not only that, but Senators who sat nearer to the Senator than I sat made the same statement, that they understood his vote to be "yea."

Mr. GALLINGER. Mr. President, I have no controversy with the Senator from Utah. If he made a mistake in casting his vote, I have done that myself. But I was keeping a record, listening very intently to each vote. My record tallies with that of the clerks, and to my ears the Senator from Utah voted distinctly "yea." Of course, if the Senator says that he did vote "nay" I have no hesitancy in accepting that statement; but there certainly was good reason for the clerks to record the vote as they did, unless my ears were much more treacherous than they ordinarily are.

Mr. QUARLES. Mr. President, at the time the vote in question was being taken I occupied my seat here, just two seats removed from that of the Senator from Utah, and when he voted I heard him distinctly answer "nay." It was not a loud vote, but it was heard here distinctly. Immediately when he was recorded by the clerks as voting "yea" several of us called his attention at once to the fact and requested him to correct the record according to the vote he had actually given.

Mr. CLAPP. Mr. President, certainly this is a matter to be regretted. Not intended as any criticism on the clerks, but in justice to the Senator from Utah, I will state that I was sitting next to him at the time and heard him say "nay" as distinctly to my knowledge as I ever heard a man make any expression. That is corroborated by the fact that the Senator from Indiana [Mr. BEVERIDGE] immediately came here and importuned him to have the record changed, which bears out the statement of the Senator from Utah.

Mr. KITTREDGE. Mr. President, when the Senator from Utah [Mr. KEARNS] cast his vote on the matter in question I was sitting next to him. I heard him clearly and distinctly state that he voted "nay" on the proposition.

Mr. CLAY. Mr. President, I am sure there can not be any fault on the part of the clerks. I was sitting right here at my desk; I had before me a list of the Senators, and I was keeping a tally of the vote at the time their names were being called. Three or four Senators were sitting around me here at that time. The vote of the Senator from Utah was heard on this side of the Chamber as "yea," and it was remarked by three or four Senators when it was announced that the amendment of the Senator from California would prevail. I do not pretend to say how the Senator voted, but I am sure that those of us on this side of the Chamber heard the vote the same way the clerks did.

Mr. HANSBROUGH. Mr. President, at the time the vote was taken I had before me on my desk a list of twelve or fifteen Republican Senators who I felt quite confident intended to vote for the Bard amendment, and I was following the call of the roll very closely. I did not have in front of me a roll call, but a list of my own, containing the names of twelve or fifteen Republican Senators. When the name of the Senator from Utah was called and he answered I felt very much gratified, and placed my hand on the knee of a Senator sitting near me and I said, "He has voted with us." I understand that the same impression prevailed in the minds of several Senators who were voting on different sides of the question.

Now, I do not, of course, undertake to impeach the integrity of the Senator from Utah, or of a single Senator who has made observations this morning to the contrary. I accept their statements; but that was my understanding.

Mr. SCOTT. Mr. President, I feel that it is incumbent upon those of us who sit near the Senator from Utah to vindicate him in the position he has taken this morning. I myself heard him vote "nay," and went to the clerks and said to them, "You have recorded Mr. KEARNS wrong; he voted 'nay.'" I was sitting in the seat of the Senator from Rhode Island [Mr. WETMORE]. Is it possible that a dozen of us here could be mistaken, and that the vote could be heard distinctly on the other side of the Chamber? The Senator from Utah as surely voted "nay" as I am standing on the floor of the Senate at this time.

Mr. McCOMAS. Mr. President, only a moment, because it was said the Senator from Indiana [Mr. BEVERIDGE], in front of me, went around to speak to the Senator from Utah. For that reason I rise to say that my name followed soon after, and immediately after I voted the Senator from Indiana asked me, "How did Mr. KEARNS vote?" I said he voted "nay;" I heard him distinctly; and then it was that the Senator from Indiana went around to see him.

Mr. FOSTER of Washington. Mr. President, I heard the Senator from Utah vote "nay" on the amendment of the Senator from California. I was sitting right here in my seat.

Mr. GORMAN. Mr. President, as a matter of course the Senator from Utah has a right to make any correction of the RECORD, and the statement he made this morning will be accepted, I take it, by the Senate. But in the matter of recording the votes of the body there ought not, I think, to be a suspicion on the part of any Senator that any one of the clerks at the desk makes a record other than a perfect one as he understands it, and after the votes are recorded that vote is read deliberately and distinctly, so that every Senator has an opportunity to correct his vote at the time, if he desires to do so, as occurred yesterday with the Senator from Georgia [Mr. BACON] who sits next to me. But after the vote referred to no correction was made by any Senator in the body, and therefore I insist that the clerks were perfectly justified, under the circumstances, in handing to the Presiding Officer the vote as they had recorded it. Quite a number of Senators on this side of the Chamber, as was suggested a few moments since, understood the Senator from Utah to have voted in the affirmative; all on this side so understood him to have voted. I myself made a record of that vote, and so recorded it, because I understood the Senator from Utah to vote "yea" upon that proposition, as the clerks recorded him.

Mr. HALE. Mr. President, the rules of the Senate completely and absolutely cover such a case as this. There is a deliberate roll call. The clerks are always patient, giving every Senator an opportunity to vote. And when the roll call is completed the rules of the Senate provide another course that makes the process perfect. That there may be no mistake in the record of a Senator's vote there is a deliberate reading of the roll, giving the vote upon each side. In a close vote, such as we witnessed here yesterday, it is unaccountable that any Senator did not watch the roll read by the clerks after the first roll call had been gone through to see how he was recorded, when the opportunity was given him to correct it. No rules could be made more complete than are these to prevent such conditions and such questions from arising. It was the duty of the Senator from Utah on that second roll call, that recapitulation of the vote, to correct the vote, as he had the opportunity of doing. He did not do that, and therefore this unfortunate condition arises where some Senators really believe, their hearing being invoked, that he voted one way, while other Senators believe that he voted the other way. But it has all come about because the Senator did not do what the rules prescribe, correct his vote before the result was finally announced.

Mr. DUBOIS. Mr. President, I was very much surprised to hear the Senator from Utah vote "yea," as I understood him, and I wish to make this statement. The relations between the Senator from Utah and myself are of so close and friendly a nature that I felt at liberty to discuss with him his vote on this proposition. I felt very strongly on the subject. I had been talking to him just previous to the vote, and knew from the answers which he gave me that he was not going to vote with us. It was not his intention to vote with us, as he told me five minutes before the vote was taken, and when I understood that he voted "yea," I was exceedingly surprised.

After the vote, I went to see the Senator from Utah to express my gratification at the vote he had cast, and he said "I did not vote 'yea;' I voted 'nay.'"

SURVEYS AND EXPLORATIONS IN THE PHILIPPINE ISLANDS.

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States; which was read, and, with the accompanying papers, referred to the Committee on the Philippines, and ordered to be printed.

To the Senate and House of Representatives:

Circumstances have placed under the control of this Government the Philippine Archipelago. The islands of that group present as many interesting and novel questions with respect to their ethnology, their fauna and flora, and their geology and mineral resources as any region of the world. At my request, the National Academy of Sciences appointed a committee to consider and report upon the desirability of instituting scientific explorations of the Philippine Islands. The report of this committee, together with the report of the Board of Scientific Surveys of the Philippine Islands, including draft of a bill providing for surveys of the Philippine Islands, which board was appointed by me, after receiving the report of the committee appointed by the National Academy of Sciences, with instructions to prepare such estimates and make such suggestions as might appear to it pertinent in the circumstances, accompanies this message.

The scientific surveys which should be undertaken go far beyond any surveys or explorations which the government of the Philippine Islands, however completely self-supporting, could be expected to make. The surveys, while of course beneficial to the people of the Philippine Islands, should be undertaken as a national work for the information not merely of the people of the Philippine Islands, but of the people of this country and of the world. Only preliminary explorations have yet been made in the archipelago, and it should be a matter of pride to the Government of the United States fully to investigate and to describe the entire region. So far as may be convenient and practical, the work of this survey should be conducted in harmony with that of the proper bureaus of the government of the Philippines, but it should not be under the control of the authorities in the Philippine Islands, for it should be undertaken as a national work and subject to a board to be appointed by Congress or the President. The plan transmitted recommends simultaneous surveys in different branches of research, organized on a cooperative system. This would tend to completeness, avoid duplication, and render the work more economical than if the exploration were undertaken piecemeal. No such organized surveys have ever yet been attempted anywhere; but the idea is in harmony with modern scientific and industrial methods.

I recommend, therefore, that provision be made for the appointment of a board of surveys to superintend the national surveys and explorations to be made in the Philippine Islands, and that appropriations be made from time to time to meet the necessary expenses of such investigation. It is not probable that the survey would be completed in a less period than that of eight or ten years, but it is well that it should be begun in the near future. The Philippine Commission, and those responsible for the Philippine government, are properly anxious that this survey should not be considered as an expense of that government, but should be carried on and treated as a national duty in the interests of science.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *February 7, 1905.*

CREDENTIALS.

Mr. WARREN presented the credentials of CLARENCE D. CLARK, chosen by the legislature of the State of Wyoming a Senator from that State for the term beginning March 4, 1905; which were read, and ordered to be filed.

PETITIONS AND MEMORIALS.

Mr. SMOOT presented a petition of the Weber Club, of Ogden, Utah, praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which was referred to the Committee on Interstate Commerce.

Mr. QUARLES presented a petition of Milwaukee Subdivision, No. 405, Brotherhood of Locomotive Engineers, of Milwaukee, Wis., praying for the enactment of legislation to prohibit the employment of men as locomotive engineers who have not had three years' experience as locomotive firemen; which was referred to the Committee on Interstate Commerce.

He also presented a petition of the Woman's Christian Temperance Union of Albany, Wis., and a petition of the Woman's Christian Temperance Union of Melrose, Wis., praying for the enactment of legislation to regulate the interstate transporta-

tion of intoxicating liquors; which were referred to the Committee on the Judiciary.

He also presented a petition of the Milwaukee Pharmaceutical Association, of Milwaukee, Wis., praying for the enactment of legislation to amend the patent laws relating to medicinal preparations; which was referred to the Committee on Patents.

He also presented a petition of Green Bay Lodge, No. 445, Brotherhood of Railroad Trainmen, of Green Bay, Wis., praying for the passage of the so-called "employers' liability bill;" which was referred to the Committee on Interstate Commerce.

He also presented a petition of the Woman's Christian Temperance Union of Superior, Wis., and a petition of the congregation of the First Baptist Church of Hudson, Wis., praying for an investigation of the charges made and filed against Hon. REED SMOOT, a Senator from the State of Utah; which were referred to the Committee on Privileges and Elections.

He also presented a memorial of the congregations of the Baptist, Presbyterian, and Methodist Episcopal churches of Lodi, Wis., remonstrating against the repeal of the present anti-canteen law; which was referred to the Committee on Military Affairs.

Mr. BURNHAM presented the memorial of S. W. Smith and 20 other citizens of Wilton, N. H., remonstrating against the enactment of legislation providing for the closing on Sunday of certain places of business in the District of Columbia; which was referred to the Committee on the District of Columbia.

He also presented a petition of Jere E. Chadwick Post, No. 70, Department of New Hampshire, Grand Army of the Republic, of Deerfield, N. H., and a petition of Prescott Jones Post, No. 32, Department of New Hampshire, Grand Army of the Republic, of Wilmot Flat, N. H., praying for the enactment of legislation to modify and simplify the pension laws of the United States; which were referred to the Committee on Pensions.

He also presented the petition of F. H. Whiting and 3 other citizens of Greenville, N. H., and the petition of the Retail Druggists' Association of Manchester, N. H., praying for the enactment of legislation to amend the patent laws relating to medicinal preparations; which were referred to the Committee on Patents.

Mr. McCUMBER. I present resolutions of the legislature of North Dakota, relative to the appointment of additional special agents to investigate the abuses in fencing the public lands. I ask that the resolutions may be read, and referred to the Committee on Public Lands.

There being no objection, the resolutions were read, and referred to the Committee on Public Lands, as follows:

Resolution introduced by Mr. Hardt.

Resolved by the house of representatives:

Whereas citizens residing in Logan and other counties in this State are bitterly complaining that individuals, firms, and corporations owning large tracts of land adjoining the public lands have fenced and are fencing large tracts of the public land, to the inconvenience and injury of the bona fide residents; and

Whereas it is reported and believed that many of these trespassers on the public domain have many hired settlers located upon the public lands, to the injury and damage of the bona fide settlers, because those hired, so-called "settlers" allow the said unlawful fencing; and

Whereas it is reported that the Department of the Interior has not a sufficient number of special agents nor appropriations to employ agents to investigate our complaints: Therefore,

Resolved, That the house of representatives of the State of North Dakota request our Representatives and Senators in the Congress of the United States to use every honorable effort to procure, if necessary, additional special agents and appropriations of the public money to enable the Interior Department of the Government to send us one or more special agents to investigate our complaints, with a view of correcting the great wrong.

Resolved further, That a copy of these resolutions, after the speaker and chief clerk sign the same, be transmitted to each of our Representatives and Senators in Congress.

Resolved further, That this resolution be printed in the journal of the house.

GEORGE H. PIERCY,
Speaker of the House.
OTTO SAUGSTAD,
Chief Clerk of the House.

Mr. GALLINGER presented a petition of the National Wholesale Lumber Dealers' Association, of Boston, Mass., praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which was referred to the Committee on Interstate Commerce.

He also presented petitions of the Woman's Christian Temperance Union of Candia, of the Woman's Christian Temperance Union of Nashua, and of the Woman's Christian Temperance Union of South Lyndeboro, all in the State of New Hampshire, praying for an investigation of the charges made and filed against Hon. REED SMOOT, a Senator from the State of Utah; which were referred to the Committee on Privileges and Elections.

He also presented memorials of sundry citizens of College View, Nebr., remonstrating against the enactment of legislation providing for the closing on Sunday of certain places of business in the District of Columbia; which were referred to the Committee on the District of Columbia.

Mr. HANSBROUGH presented a joint resolution of the legislature of North Dakota, relative to the appointment of special agents by the United States Government for the purpose of investigating abuses in fencing public lands; which was referred to the Committee on Public Lands.

Mr. STONE presented a memorial of the Cigar Manufacturers' Association of St. Louis, Mo., remonstrating against any reduction of the duty on tobacco and cigars imported from the Philippine Islands; which was referred to the Committee on the Philippines.

He also presented a petition of B. H. Porch Post, No. 135, Department of Missouri, Grand Army of the Republic, of Olean, Mo., praying for the enactment of legislation to modify and simplify the pension laws of the United States; which was referred to the Committee on Pensions.

He also presented a petition of the Cinchona Club, of St. Louis, Mo., praying for the enactment of legislation to amend the patent laws relating to medicinal preparations; which was referred to the Committee on Patents.

He also presented a petition of the Merchants' Exchange, of St. Louis, Mo., praying that an appropriation of $15,000,000 be made for the permanent improvement of the upper Mississippi River; which was referred to the Committee on Commerce.

Mr. DRYDEN presented the petition of Reuben Woolman, of Woodstown, N. J., praying for the enactment of legislation providing for continued prohibition of the liquor traffic in the Indian Territory according to recent agreements with the Five Civilized Tribes; which was ordered to lie on the table.

He also presented the memorial of John Conger, of East Rahway, N. J., remonstrating against the repeal of the present anti-canteen law; which was referred to the Committee on Military Affairs.

He also presented the petition of Dr. A. J. Loomis, of Jersey City, N. J., praying for the enactment of legislation to amend the patent laws relating to medicinal preparations; which was referred to the Committee on Patents.

Mr. COCKRELL. I present a joint resolution of the legislature of Missouri, relative to the recommendations of the President with reference to the enlargement of the powers of the Interstate Commerce Commission. I ask that the resolution may be read, and referred to the Committee on Interstate Commerce.

There being no objection, the joint resolution was read, and referred to the Committee on Interstate Commerce, as follows:

State of Missouri, house of representatives, forty-third general assembly.

JEFFERSON CITY, MO., *February 2, 1905.*

Senator F. M. COCKRELL,
United States Senate, Washington, D. C.

DEAR SIR: I have the honor to herewith transmit to you, by order of the house of representatives, a concurrent resolution this day adopted by the general assembly of the State of Missouri.

Very respectfully, yours,

B. F. RUSSELL,
Chief Clerk House of Representatives.

Joint resolution.

Whereas the President of the United States, in his last annual address to the Congress, recommended that "the Interstate Commerce Commission should be vested with the power, where rate (for the transportation of property in the interstate or foreign commerce) has been challenged and, after full hearing, found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place; the ruling of the Commission to take effect immediately and to obtain unless and until it is reversed by the court of review:" Therefore, be it

Resolved by the house of representatives (the senate concurring therein) as follows, That the Senators and Representatives of Missouri in the Congress of the United States be requested to use their best efforts to secure the enactment of such laws as will best tend to the carrying out of the recommendations of the President with reference to the enlargement of the powers of the Interstate Commerce Commission; and that a copy of this resolution, duly authenticated, be transmitted to each of our Representatives in the Congress.

Mr. COCKRELL presented a petition of the board of directors of the Merchants' Exchange of St. Louis, Mo., praying that an appropriation of $15,000,000 be made for the improvement of the upper Mississippi River; which was referred to the Committee on Commerce.

He also presented a petition of Pride of the West Lodge, No. 6, Brotherhood of Locomotive Firemen, of De Soto, Mo., praying for the passage of the so-called "employers' liability bill;" which was referred to the Committee on Interstate Commerce.

Mr. TELLER. I present a joint resolution of the legislature of Colorado, relative to the enactment of legislation giving to the Interstate Commerce Commission adequate power to correct rates and to regulate service on railroads in the United States. I ask that the joint resolution be printed in the RECORD and referred to the Committee on Interstate Commerce.

There being no objection, the joint resolution was referred to the Committee on Interstate Commerce, and ordered to be printed in the RECORD, as follows:

Senate joint resolution No. 3.
(By Senator Drake.)

Whereas the President of the United States, in his last annual message to Congress, pointed out the necessity of governmental regulation of railroad rates and service through the delegated power of Congress given to the Interstate Commerce Commission; and

Whereas there is now pending before Congress legislation looking toward the amendment of the interstate-commerce act as recommended by the President: Therefore be it

Resolved by the senate of the fifteenth general assembly of the State of Colorado (the house concurring), That we heartily approve of the views set forth in the last annual message of the President of the United States on this subject, and we urge that such legislation may be promptly passed as will give the Interstate Commerce Commission adequate power to correct rates and to regulate service on the railroads of the United States; and be it further

Resolved, That the Senators and Members of the House of Representatives in Congress from Colorado be instructed to use every effort to secure the passage of such legislation during the present session of Congress.

WILLIAM H. DICKSON,
Speaker of the House of Representatives.
JESSE F. MCDONALD,
President of the Senate.

Approved, January 26, 1905.

ALVA ADAMS,
Governor of the State of Colorado.

State of Colorado. Senate joint resolution No. 3.

Regarding the necessity of governmental regulation of railroad rates, etc.

STATE OF COLORADO, ss.

This act originated in the senate.

M. Z. FARWELL, *Secretary.*

STATE OF COLORADO, *Secretary's office, ss.*

This joint resolution was filed in my office this 27th day of January, A. D. 1905, at 9.20 o'clock a. m.

JAMES COWIE,
Secretary of State.

Mr. SPOONER presented a petition of Green Bay Lodge, No. 445, Brotherhood of Railroad Trainmen, of Green Bay, Wis., praying for the passage of the so-called "employers' liability bill;" which was referred to the Committee on Interstate Commerce.

He also presented a petition of the congregation of the Methodist Episcopal Church of Black River Falls, Wis., and a petition of Waupaca Lodge, No. 50, Independent Order of Good Templars, of Waupaca, Wis., praying for the enactment of legislation providing for continued prohibition of the liquor traffic in the Indian Territory according to recent agreements with the Five Civilized Tribes; whcih were ordered to lie on the table.

Mr. HOPKINS presented petitions of sundry citizens of Chicago, Alton, Atkinson, Springfield, Milford, Highland Park, and East St. Louis, all in the State of Illinois, praying for the enactment of legislation to amend the patent laws relating to medicinal preparations; which were referred to the Committee on Patents.

He also presented a petition of Chicago Division, No. 96, Brotherhood of Locomotive Engineers, of Chicago, Ill., praying for the passage of the so-called "employers' liability bill;" which was referred to the Committee on Interstate Commerce.

He also presented petitions of sundry citizens of Chicago, Aurora, Galva, Sterling, and Moline, all in the State of Illinois, praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which were referred to the Committee on Interstate Commerce.

He also presented petitions of sundry citizens of Rockford, Pleasant Mound, and Oak Park, all in the State of Illinois, praying for the enactment of legislation providing for the protection of Indians against the liquor traffic in the new States to be formed; which were ordered to lie on the table.

Mr. MCCOMAS presented a petition of sundry citizens of Westminster, Md., praying for the enactment of legislation to prohibit the sale of intoxicating liquor to Indians in the Indian Territory when admitted to statehood; which was ordered to lie on the table.

Mr. PATTERSON presented a petition of Mount Ouray Lodge, No. 140, Brotherhood of Locomotive Firemen, of Salida, Colo., praying for the passage of the so-called "employers' liability bill;" which was referred to the Committee on Interstate Commerce.

Mr. HALE presented the memorial of E. I. White and 37 other citizens of the State of Maine, and the memorial of Fred Lucas and 24 other citizens of the State of Maine, remonstrating against the repeal of the present oleomargarine law; which were referred to the Committee on Agriculture and Forestry.

He also presented the petition of Fred Lucas and 25 other citizens of the State of Maine, and the petition of E. I. White and 37 other citizens of the State of Maine, praying for the enactment of legislation providing for a parcels post and postal currency; which were referred to the Committee on Post-Offices and Post-Roads.

Mr. PROCTOR presented a petition of the Vermont Antisaloon League, praying for the enactment of legislation providing for continued prohibition of the liquor traffic in the Indian Territory according to recent agreements with the Five Civilized Tribes; which was ordered to lie on the table.

He also presented a petition of the Vermont State Dairymen's Association, praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which was referred to the Committee on Interstate Commerce.

Mr. CLAPP presented a petition of sundry citizens of Lake City, Minn., praying for the enactment of legislation to amend the patent laws relating to medicinal preparations; which was referred to the Committee on Patents.

He also presented a petition of sundry citizens of Luverne, Minn., praying for the adoption of an amendment to the statehood bill granting continued prohibition for twenty-one years to the Indian Territory; which was ordered to lie on the table.

Mr. CARMACK presented a paper to accompany the bill (S. 3793) for the relief of the estate of Laodocia Bivens, deceased; which was referred to the Committee on Claims.

Mr. FAIRBANKS presented a petition of the legislature of Indiana, praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which was referred to the Committee on Interstate Commerce, and ordered to be printed in the RECORD, as follows:

Senate resolution No. 31.

Be it resolved by the senate of Indiana, That the United States Senators and Representatives of Indiana in the Congress of the United States are requested to use their influence toward enacting into law at the present session of Congress the recommendation contained in the President's message that "the Interstate Commerce Commission should be vested with the power, where a given rate (for the transportation of property in interstate foreign commerce) has been challenged and after full hearing, found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place, the ruling of the Commission to take effect immediately and to obtain unless and until it is reversed by the court of review."

HUGH H. MILLER,
President of the Senate.
JULIAN D. HOGATE,
Secretary of Senate.

ROAD BUILDING IN ALASKA.

Mr. DILLINGHAM. Mr. President, I hold in my hand a paper which I ask unanimous consent to present and have printed as a Senate document.

I wish simply to say that it is a paper prepared by Chester Wells Purrington, special assistant of the United States Geological Survey, who has been engaged in work in Alaska bearing on the question of road building in that district.

We have there an area two-thirds as large as all the States east of the Mississippi River, and outside of the little towns there is not a highway in the district. Congress is very much lacking in information upon the conditions relating to road building in that section. This paper takes up the question and shows what has been done in the Yukon territory under the British administration—in the central Yukon, on the Seward Peninsula, in southeastern Alaska, and in British Columbia, and it shows the consequent reduction in freight rates.

The paper is accompanied by a half-dozen or more illustrations. I ask unanimous consent that it may be printed as a Senate document.

The PRESIDENT pro tempore. With the illustrations?

Mr. DILLINGHAM. With the illustrations.

The PRESIDENT pro tempore. The Senator from Vermont asks unanimous consent that the paper he sends to the desk, with illustrations, as the Chair understands, may be printed as a Senate document. Is there objection?

Mr. GORMAN. I ask the Senator from Vermont whether it is not a wise thing to have this matter referred to the Committee on Printing? Our attention has been sharply drawn, and properly drawn, by the President of the United States to the fact that the amount being appropriated on account of printing an immense number of documents is in excess of the demands of the Government. I wish to say in this connection that I have sat here for some time and have heard requests for unanimous consent granted for publication in the RECORD of resolutions of boards of trade and petitions that have been presented, and I think we ought to call a halt upon that practice, which has grown up in the past.

I suggest to the Senator from Vermont that under the rules this matter ought to go to the Committee on Printing, and we ought to have an estimate of its cost, because under the rules of the body we can only order printing to the amount of a few hundred dollars. It will not delay the matter, and I think it had better take that course, in the case of a paper prepared by some individual and not by Government officials.

Mr. DILLINGHAM. Mr. President, I realize the force of the suggestions of the Senator from Maryland. I think the Senator will bear me witness that during the time I have been here I have presented as few requests of this kind as any Senator upon the floor. This is a matter of exceptional interest and exceptional value or I would not have presented it. But, as a matter of course, it requires unanimous consent to have it printed, and if the Senator objects I shall be very glad to have it go to the Committee on Printing, where its importance, I am sure, will make its own impression.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Vermont?

Mr. SPOONER. I understand that it is agreed it shall go to the Committee on Printing.

The PRESIDENT pro tempore. The Senator said if there was objection made he would consent to that reference.

Mr. GORMAN. I prefer that it shall go to the Committee on Printing.

The PRESIDENT pro tempore. It will be referred to the Committee on Printing.

REPORTS OF COMMITTEES.

Mr. FOSTER of Washington, from the Committee on Pensions, to whom was referred the bill (S. 6471) granting an increase of pension to Frances H. Scott, reported it without amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (S. 6515) granting an increase of pension to George Murphy, reported it with an amendment, and submitted a report thereon.

Mr. NELSON, from the Committee on Public Lands, to whom was referred the bill (S. 6565) granting right of way for trailway to W. W. Bass, of Coconino County, Ariz., for travel across the Grand Canyon of Arizona, and ferry privileges, and so forth, across the Colorado River therein, reported it without amendment, and submitted a report thereon.

Mr. GIBSON, from the Committee on Public Lands, submitted the views of the minority on the bill (S. 5800) to amend the homestead laws as to certain unappropriated and unreserved lands in Souh Dakota, which was favorably reported from the Committee on Public Lands on February 4, 1905, by Mr. GAMBLE.

Mr. CULLOM, from the Committee on Foreign Relations, to whom was referred the amendment submitted by Mr. GAMBLE on the 30th ultimo, proposing to increase the salary of the consul at Three Rivers, Canada, from $2,000 to $2,500, intended to be proposed to the diplomatic and consular appropriation bill, reported favorably thereon, and moved that it be referred to the Committee on Appropriations and printed; which was agreed to.

He also, from the same committee, to whom was referred the amendment submitted by Mr. NELSON on the 25th ultimo, proposing to increase the salary of the consul-general at Christiania, Norway, from $2,000 to $2,500, intended to be proposed to the diplomatic and consular appropriation bill, reported favorably thereon, and moved that it be referred to the Committee on Appropriations and printed; which was agreed to.

He also, from the same committee, to whom was referred the amendment submitted by Mr. DRYDEN on the 6th instant, proposing to appropriate $7,500 for salary of envoy extraordinary and minister plenipotentiary to Morocco, intended to be proposed to the diplomatic and consular appropriation bill, reported favorably thereon, and moved that it be referred to the Committee on Appropriations and printed; which was agreed to.

Mr. OVERMAN, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 17672) granting an increase of pension to Oliver C. Cleveland;

A bill (H. R. 15891) granting a pension to Harriett Stanley;

A bill (H. R. 14305) granting a pension to Walter Gardner;

A bill (H. R. 15082) granting a pension to James C. Albritton;

A bill (H. R. 18031) granting an increase of pension to John Tipton;

A bill (H. R. 16874) granting an increase of pension to Reuben Terry;

A bill (H. R. 14255) granting an increase of pension to Margaret H. Bates;

A bill (H. R. 16861) granting an increase of pension to Mary L. Walker; and

A bill (H. R. 17126) granting an increase of pension to Caroline Jennings.

Mr. McCUMBER, from the Committee on Pensions, to whom was referred the bill (S. 5909) granting a pension to Russell A. McKinley, reported it with an amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (S. 6417) granting an increase of pension to Lucy F. Cruttenden, reported it with amendments, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (S. 6418) granting an increase of pension to Wallace Goff, reported it with an amendment, and submitted a report thereon.

He also (for Mr. TALLIAFERRO), from the same committee, to whom was referred the bill (S. 7076) granting a pension to Susan Hayman, reported it with amendments, and submitted a report thereon.

He also (for Mr. TALIAFERRO), from the same committee, to whom were referred the following bills, reported them each with an amendment, and submitted reports thereon:

A bill (S. 6924) granting an increase of pension to Richard H. McIntire; and

A bill (S. 6925) granting an increase of pension to Laura C. Curtiss.

Mr. ALGER, from the Committee on Pensions, to whom was referred the bill (S. 6989) granting an increase of pension to Jacob O. Stout, reported it with an amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (H. R. 17311) granting an increase of pension to Adam W. Grassley, reported it without amendment, and submitted a report thereon.

Mr. SCOTT, from the Committee on Pensions, to whom was referred the bill (S. 5321) granting an increase of pension to William Klingensmith, reported it with amendments, and submitted a report thereon.

Mr. BURNHAM, from the Committee on Pensions, to whom were referred the following bills, reported them each with an amendment, and submitted reports thereon:

A bill (S. 6706) granting an increase of pension to Jacob Ormerod; and

A bill (S. 7034) granting an increase of pension to John Q. A. Foss.

WALTER DELAFIELD BOLLARD.

Mr. PERKINS. I am directed by the Committee on Naval Affairs to report back favorably two bills, Senate bill 5816 and Senate bill 6790, and as it will be only a short time before the expiration of the Congress I ask unanimous consent for the present consideration of the bills, by direction of the committee.

I first report back with an amendment the bill (S. 5816) waiving the age limit for admission to the Pay Corps of the United States Navy in the case of Pay Clerk Walter Delafield Bollard, United States Navy, and I submit a report thereon.

The PRESIDENT pro tempore. The bill will be read.

The Secretary read the bill, as follows:

Be it enacted, etc., That the age limit for admission to the Pay Corps of the United States Navy be, and is hereby, waived in the case of Walter Delafield Bollard, United States Navy, in consideration of efficient and meritorious service as pay clerk in the Navy during thirteen years, who, on November 16, 1900, the morning after the U. S. S. Yosemite, ruined by typhoon, helpless, and rapidly filling, had to be abandoned at sea, at most imminent peril to himself, did recover her entire treasure, thus saving to the Government some $80,000 silver (Mexican) and $1,400 gold.

The amendment of the Committee on Naval Affairs was to strike out all after the words "United States Navy," in line 5, after the name "Bollard."

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. DANIEL. Is there a report accompanying it?

Mr. PLATT of Connecticut. I think there ought to be an explanation of the bill, to say the least. If we are called upon to act on the bill when reported, certainly there ought to be some explanation given of it.

Mr. PERKINS. If the Senator desires the report to be read, it will explain it. The report is very short.

The PRESIDENT pro tempore. The report will be read.

The Secretary proceeded to read the report, and read as follows:

The Committee on Naval Affairs, to whom was referred the bill (S. 5816) waiving the age limit for admission to the Pay Corps of the United States Navy in the case of Pay Clerk Walter Delafield Bollard, United States Navy, having considered the same, report thereon with a recommendation that it pass with an amendment as follows:

Strike out all after the word "Navy," in line 5.

The following is a statement by the commanding officer of the *Yosemite*, on which Pay Clerk Bollard served:

"The following is a statement by the officer commanding the *Yosemite* when struck by the typhoon:

"'Circumstances attending the salvage of some $80,000 Mexican and $1,400 United States gold, from the U. S. S. *Yosemite:*

"'On the morning of November 16, 1900, the U. S. S. *Yosemite* was

at sea some 40 miles to the north-northwestward of the island of Guam. The vessel was in a sinking condition from having struck on the coral reef in the harbor of San Luis d'Apra, Guam, and then having been blown to sea on November 13, 1900.

"'After the crew and officers had abandoned the ship at night and as soon as it was daylight, November 16, 1900, Pay Clerk W. D. Bollard, United States Navy, was sent to rescue the Government funds on the *Yosemite*, he being the pay officer of the ship and in charge of the funds.'"

Mr. PERKINS. I will simply state all there is in the bill. The young man has been a paymaster's clerk in the Navy for some six or eight years. He distinguished himself, as the report of the commander there recites. He is about a year beyond the age limit. The bill leaves it in the discretion of the President to appoint him paymaster if he desires to do so. That is all there is to the bill.

The PRESIDENT pro tempore. Is there objection to the consideration of the bill?

Mr. SPOONER. I am interested to get the balance of that story. It ought not to be stopped so abruptly.

Mr. COCKRELL. Let the report be read.

The PRESIDENT pro tempore. The remainder of the report will be read.

The Secretary resumed and concluded the reading of the report, as follows:

A very heavy sea was running at the time, and as the ship then had in her about all the water she would stand up under, her sudden disappearance was likely to occur owing to the leaky and weakened condition of the bulkhead at frame 53. For these reasons but few men were allowed to go with Mr. Bollard.

Under these trying and dangerous conditions Mr. Bollard successfully superintended the transfer from the U. S. S. *Yosemite* to the U. S. S. *Justin*, in ship's boats, of some $80,000 Mexican, weighing about three tons, and $1,400 United States gold.

Very respectfully,

B. B. BIERER, *Lieutenant U. S. Navy,*
Commanding U. S. S. Yosemite on this occasion.

WASHINGTON, D. C., *December 29, 1901.*

Mr. SPOONER. I should like to ask the Senator how much the age limit is waived; in other words, how old is this gentleman?

Mr. PERKINS. I understand that he is about 27, one year above the limit.

The PRESIDING OFFICER (Mr. GALLINGER in the chair). Is there objection to the present consideration of the bill?

Mr. COCKRELL. Let it be read for information.

The Secretary proceeded to read the bill.

Mr. PERKINS. All the Secretary is reading is stricken out by the amendment, and the bill simply authorizes the President to appoint him if he desires to do so.

Mr. CULLOM. There seems to be too much about this bill to consider it now. I object.

The PRESIDING OFFICER. The Senator from Illinois objects, and the bill will go to the Calendar.

AWARD OF MEDALS OF HONOR.

Mr. PERKINS. I am directed by the Committee on Naval Affairs, to whom was referred the bill (S. 6970) providing for the award of medals of honor to certain officers and men of the Navy and Marine Corps, to report it favorably without amendment, and I ask for its present consideration.

The Secretary read the bill; and by unanimous consent the Senate, as in Committee of the Whole, proceeded to its consideration. It authorizes the Secretary of the Navy to cause to be struck medals of honor of such design and class as may be appropriate, and to present the same to officers and men of the Navy and Marine Corps who may hereafter distinguish themselves in action, or who display conspicuous gallantry or render specially meritorious service otherwise than in battle.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

GRAVE OF MAJ. PIERRE CHARLES L'ENFANT.

The PRESIDING OFFICER. The senior Senator from New Hampshire reports from the Committee on the District of Columbia without amendment the bill (S. 7081) to mark the grave of Maj. Pierre Charles L'Enfant.

Mr. LODGE. I ask for the present consideration of the bill. There can be no objection to it.

The PRESIDING OFFICER. The bill will be read.

The Secretary read the bill, as follows:

Be it enacted, etc., That a sum not exceeding $500 is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, to enable the Commissioners of the District of Columbia to purchase and erect over the grave of Maj. Pierre Charles L'Enfant, at its present location, a tombstone inscribed as said Commissioners shall direct: *Provided*, That the owners of the land whereon said grave is situated shall dedicate a plot of ground, acceptable to said Commissioners, to be reserved in perpetuity as such burial site, and shall also dedicate a permanent right of way for the use of the public over their said land from the adjacent public road to said burial site.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. DANIEL. I should like to hear the report read or a statement of the bill.

Mr. LODGE. The Committee on the District of Columbia has reported the bill, I think, without any written report. It is simply to enable the Commissioners, who have asked for it, to mark the neglected grave of Major L'Enfant, who, as every one knows, laid out this city. The appropriation is only $500, and I think it is something that ought to be done.

Mr. DANIEL. Very well.

There being no objection, the bill was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

BILLS AND JOINT RESOLUTION INTRODUCED.

Mr. McCUMBER introduced a bill (S. 7096) granting an increase of pension to Amanda H. Burrows; which was read twice by its title, and referred to the Committee on Pensions.

Mr. DANIEL introduced a bill (S. 7097) to provide for enlarging and improving the United States building at Lynchburg, Va., containing the United States court rooms, clerk's office, post-office, and internal-revenue offices; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

Mr. LODGE introduced a bill (S. 7098) granting to Percival Lowell certain land in the Territory of Arizona; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Public Lands.

Mr. CARMACK introduced a bill (S. 7099) for the relief of the legal representatives of the estate of Lewis M. Maney, deceased; which was read twice by its title, and referred to the Committee on Claims.

He also introduced a bill (S. 7100) for the relief of the estate of J. E. Bauman, sr., deceased; which was read twice by its title, and referred to the Committee on Claims.

Mr. PLATT of Connecticut introduced a bill (S. 7101) to authorize the issuance of special bench warrants in certain criminal cases; which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. COCKRELL introduced a bill (S. 7102) for the relief of Mary Christopher, heir of Lowell G. Spaulding, deceased; which was read twice by its title.

Mr. COCKRELL. To accompany the bill I present the petition of Mary Christopher, heir of Lowell G. Spaulding, deceased, praying that her claim for property taken by the Army during the civil war be referred to the Court of Claims. I also present the affidavits of A. M. Clark, Charles W. Hazell, Leonard Schricker, and letter to General Rosecrans signed by L. G. Spaulding and others. I move that the bill and accompanying papers be referred to the Committee on Claims.

The motion was agreed to.

Mr. GIBSON introduced a bill (S. 7103) confirming the title of the St. Paul, Minneapolis and Manitoba Railway Company to certain lands in the State of Montana, and for other purposes; which ws read twice by its title, and referred to the Committee on Public Lands.

He also introduced a bill (S. 7104) for the relief of John T. Eaton; which was read twice by its title, and referred to the Committee on Claims.

Mr. OVERMAN introduced the following bills; which were severally read twice by their titles, and, with the accompanying papers, referred to the Committee on Claims:

A bill (S. 7105) for the relief of the heirs of Thomas A. Dough, deceased;

A bill (S. 7106) for the relief of William J. Hogan;

A bill (S. 7107) for the relief of Walter T. Dough;

A bill (S. 7108) for the relief of the estate of Esau Berry; and

A bill (S. 7109) for the relief of the estate of B. L. Robinson, deceased.

Mr. CULBERSON (by request) introduced a bill (S. 7110) for the relief of the estate of Andrew J. Joyce, deceased; which was read twice by its title, and referred to the Committee on Claims.

Mr. FOSTER of Louisiana introduced a bill (S. 7111) for the relief of the heirs of Mrs. Gabriel Le Breton Deschapelles; which was read twice by its title, and referred to the Committee on Claims.

Mr. McCOMAS introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 7112) granting a pension to Martin Moats (with accompanying paper);

A bill (S. 7113) granting an increase of pension to Andrew J. Gibson;

A bill (S. 7114) granting an increase of pension to Alexander Shaney; and

A bill (S. 7115) granting an increase of pension to George Adams.

Mr. CLAPP introduced a bill (S. 7116) for the relief of Herman W. Reichow; which was read twice by its title, and referred to the Committee on Claims.

Mr. KITTREDGE introduced a bill (S. 7117) establishing that portion of the boundary line between the State of South Dakota and the State of Nebraska south of Union County, S. Dak.; which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. MARTIN introduced a bill (S. 7118) for the erection of a keeper's dwelling to be attached to the fog-signal station at the harbor of Cape Charles, Virginia; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Commerce.

Mr. TELLER introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Claims:

A bill (S. 7119) for the relief of the heirs of Lemuel J. Bowden, deceased; and

A bill (S. 7120) for the relief of Joshua T. Reynolds.

Mr. GALLINGER introduced the following bills, which were severally read twice by their titles, and referred to the Committee on the District of Columbia:

A bill (S. 7121) to establish market stands in the city of Washington for farmers and others selling produce of their own raising (with accompanying paper);

Abill (S. 7122) requiring street railway companies in the District of Columbia to equip their cars with vestibules; and

A bill (S. 7123) to change the name of Jackson street, in the northeast section of the District of Columbia, to Jewell street.

Mr. HALE introduced the following bills, which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 7124) granting an increase of pension to Harris Howard;

A bill (S. 7125) granting an increase of pension to Lorenzo D. Cousins;

A bill (S. 7126) granting an increase of pension to William B. Rush; and

A bill (S. 7127) granting an increase of pension to William R. Ladd.

Mr. PATTERSON introduced a bill (S. 7128) granting an increase of pension to James Langdon; which was read twice by its title, and referred to the Committee on Pensions.

Mr. BLACKBURN introduced a bill (S. 7129) granting an increase of pension to Jacob C. Rardin; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. PLATT of Connecticut introduced a joint resolution (S. R. 107) authorizing the Commission to Revise the Laws of the United States to incorporate in its final report the criminal and penal laws and the judiciary title heretofore reported by said Commission; which was read twice by its title, and referred to the Committee on the Judiciary.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. DANIEL submitted an amendment proposing to appropriate $1,456.17 to pay Capt. George E. Picket, paymaster, United States Army, intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. FOSTER of Louisiana submitted an amendment providing for the free transmission through the mails of all annual and biennial reports published by State or Territorial departments of education, when addressed to schools or school officials, etc., intended to be proposed by him to the post-office appropriation bill; which was referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

Mr. FORAKER submitted an amendment proposing to appropriate $195,260.43 to pay amounts found due the several States for expenses incurred and paid by them under act of July 27, 1861, etc., intended to be proposed by him to the general deficiency appropriation bill; which was ordered to be printed, and, with the accompanying papers, referred to the Committee on Appropriations.

He also submitted an amendment proposing to appropriate $900 for clerk hire at the consulate at Santiago de Cuba, and proposing to increase the salary of the consul at Toronto, Canada, from $2,500 to $3,000 per annum, intended to be proposed by him to the diplomatic and consular appropriation bill; which was referred to the Committee on Foreign Relations, and ordered to be printed.

He also submitted the following amendments, intended to be proposed by him to the District of Columbia appropriation bill; which were ordered to lie on the table, and be printed:

An amendment proposing to increase the salary of the superintendent of insurance of the District of Columbia from $3,000 to $3,500 per annum;

An amendment relative to extra clerks and appraisers in the department of insurance of the District of Columbia;

An amendment proposing to appropriate $900 for stenographer and clerk in the department of insurance of the District of Columbia, instead of $600 for temporary clerk hire; and

An amendment proposing to increase the total appropriation for the department of insurance of the District of Columbia from $8,500 to $8,800.

Mr. QUARLES submitted an amendment proposing to increase the appropriation for the support of Indian day and industrial schools from $300,000 to $350,000, intended to be proposed by him to the Indian appropriation bill; which was referred to the Committee on Indian Affairs, and ordered to be printed.

Mr. ANKENY submitted an amendment, proposing to appropriated $50,000 for the improvement of the Columbia River from the mouth of the Okanogan River, Washington, to Kettle Falls, Washington, intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. TELLER submitted an amendment authorizing the Secretary of the Interior to make an investigation as to the practicability of providing a water supply for irrigation purposes, to be used on a portion of the reservation of the Southern Utes, in Colorado, etc., intended to be proposed by him to the Indian appropriation bill; which was referred to the Committee on Indian Affairs, and ordered to be printed.

Mr. ALLISON submitted an amendment proposing to appropriate $1,500 to pay Lalla B. Ingersoll, widow of John C. Ingersoll, late consul of the United States at Cartagena, Colombia, etc., intended to be proposed by him to the general deficiency appropriation bill; which was referred to the Committee on Foreign Relations, and ordered to be printed.

Mr. CLAY submitted an amendment proposing that hereafter the Post-Office Department shall transmit through the mails, under such regulations as the Postmaster-General may from time to time prescribe, all bulletins from the State boards of entomology as second-class mail matter, intended to be proposed by him to the post-office appropriation bill; which was referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

He also submitted an amendment proposing that hereafter the Post-Office Department shall transmit free through the mails the annual and biennial reports published by the State or Territorial departments of education, when the same are directed to any school or school official, intended to be proposed by him to the post-office appropriation bill; which was referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

GROWERS OF LEAF TOBACCO.

Mr. DANIEL. Mr. President, I offer a resolution of inquiry, for which I ask present consideration.

The PRESIDING OFFICER. The resolution will be read.

The Secretary read the resolution, as follows:

Resolved by the Senate, That the Secretary of the Treasury be, and he is hereby, directed to inform the Senate whether or not the proviso of section 69, act of August 28, 1894, to wit:

"That farmers and growers of tobacco who sell leaf tobacco of their own growth and raising shall not be regarded as manufacturers of tobacco," etc.—

Has been construed by the Treasury Department or any officer thereof to apply only and as a personal privilege to such farmers and growers of tobacco who sell in person, and not by an agent or employee, "leaf tobacco of their own growth and raising;" or to those who deliver the same by their own hand and not by an agent or employee; and also to furnish the Senate with copies of the opinions, if any, that have been rendered on this subject by any officer of the Treasury Department.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

Mr. LODGE. Let it go over, Mr. President. It seems a rather complicated matter to be decided in the two or three minutes remaining before the Senate must proceed to the House of Representatives, in pursuance of the order heretofore made.

The PRESIDING OFFICER. The resolution will go over under the rule.

SENATE MANUAL AND RULES.

Mr. SPOONER. I ask for the adoption of the orders which I send to the desk. I will state that they are the customary orders made by the Senate every two years.

The orders were read, considered by unanimous consent, and agreed to, respectively, as follows:

Ordered, That the Committee on Rules is instructed to prepare a new edition of the Senate Manual, and that there be printed 2,500 copies of the same for the use of the committee.

Ordered, That 500 copies of the Standing Rules of the Senate, with index, together with rules for the regulation of the Senate wing of the Capitol, adopted by the Committee on Rules, be printed and bound in paper covers for the use of the Senate.

COUNT OF ELECTORAL VOTES.

At 12 o'clock and 57 minutes p. m.,

The PRESIDENT pro tempore. Senators, under the concurrent resolution providing for the count of the electoral votes for President and Vice-President of the United States, the Senate will now proceed to the Hall of the House of Representatives.

The Senate, preceded by the President pro tempore, the Secretary, and the Sergeant-at-Arms, thereupon proceeded to the Hall of the House of Representatives for the purpose of participating in the count of the electoral votes for President and Vice-President of the United States.

The Senate returned to its Chamber at 1 o'clock and 55 minutes p. m., and the President pro tempore resumed the chair.

Mr. BURROWS, one of the tellers appointed on behalf of the Senate in pursuance of the concurrent resolution of the two Houses to ascertain the result of the election for President and Vice-President of the United States, said:

Mr. President, the tellers on the part of the Senate report to the Senate the following as the result of the ascertainment and counting of the electoral vote for President and Vice-President of the United States for the term beginning March 4, 1905, in order that the report may be entered upon the Journal of the Senate.

The PRESIDENT pro tempore. Senators, the state of the vote for President of the United States, as delivered to the President of the Senate, is as follows:

The whole number of the electors appointed to vote for President of the United States is 476, of which a majority is 239.

Theodore Roosevelt, of the State of New York, has received for President of the United States 336 votes.

Alton Brooks Parker, of the State of New York, has received 140 votes.

The state of the vote for Vice-President of the United States, as delivered to the President of the Senate, is as follows:

The whole number of the electors appointed to vote for Vice-President of the United States is 476, of which a majority is 239.

Charles Warren Fairbanks, of the State of Indiana, has received 336 votes.

Henry Gassaway Davis, of the State of West Virginia, has received 140 votes.

This announcement of the state of the vote by the President of the Senate shall be deemed a sufficient declaration of the persons elected President and Vice-President of the United States, each for the term beginning March 4, 1905, and shall be entered, together with a list of the votes, on the Journal of the United States Senate.

The report of the tellers, as entered on the Journal, is as follows:

The undersigned, JULIUS C. BURROWS and JOSEPH WELDON BAILEY, tellers on the part of the Senate, and JOSEPH H. GAINES and GORDON RUSSELL, tellers on the part of the House of Representatives, report the following as the result of the ascertainment and counting of the electoral vote for President and Vice-President of the United States for the term beginning March 4, 1905:

State.	Number of electoral votes to which each State is entitled.	For President.		For Vice-President.	
		Theodore Roosevelt, of New York.	Alton Brooks Parker, of New York.	Charles Warren Fairbanks, of Indiana.	Henry Gassaway Davis, of West Virginia.
Alabama	11		11		11
Arkansas	9		9		9
California	10	10		10	
Colorado	5	5		5	
Connecticut	7	7		7	
Delaware	3	3		3	
Florida	5		5		5
Georgia	13		13		13
Idaho	3	3		3	
Illinois	27	27		27	
Indiana	15	15		15	
Iowa	13	13		13	
Kansas	10	10		10	
Kentucky	13		13		13
Louisiana	9		9		9
Maine	6	6		6	
Maryland	8	1	7	1	7
Massachusetts	16	16		16	
Michigan	14	14		14	
Minnesota	11	11		11	
Mississippi	10		10		10
Missouri	18	18		18	
Montana	3	3		3	
Nebraska	8	8		8	
Nevada	3	3		3	
New Hampshire	4	4		4	
New Jersey	12	12		12	
New York	39	39		39	
North Carolina	12		12		12
North Dakota	4	4		4	
Ohio	23	23		23	
Oregon	4	4		4	
Pennsylvania	34	34		34	
Rhode Island	4	4		4	
South Carolina	9		9		9
South Dakota	4	4		4	
Tennessee	12		12		12
Texas	18		18		18
Utah	3	3		3	
Vermont	4	4		4	
Virginia	12		12		12
Washington	5	5		5	
West Virginia	7	7		7	
Wisconsin	13	13		13	
Wyoming	3	3		3	
Total	476	336	140	336	140

J. C. BURROWS,
J. W. BAILEY,
Tellers on the part of the Senate.

JOSEPH H. GAINES,
GORDON RUSSELL,
Tellers on the part of the House.

STATEHOOD BILL.

Mr. CULLOM. I move that the Senate proceed to the consideration of executive business.

Mr. BACON. I hope the Senator will withhold the motion for a moment. There is a matter which it is important we should have determined.

Mr. CULLOM. I will withhold the motion.

Mr. BACON. The bill which we passed last night of course has to go to the House of Representatives with the amendments, and there were so many various phases in which the changed conditions placed the measure when it was before the Senate that there is some doubt as to exactly what was finally, in some respects, the shape of the bill. I wish to call the attention of the Senate to one question in order that it may be definitely determined.

The Senate will remember that upon my motion the Senate struck out all the bill beginning at section 19 and extending to section 37.

Mr. LODGE. Mr. President, I rise to a question or order. Before we discuss the bill must it not be recalled?

Mr. BACON. No; it has not gone to the House.

Mr. LODGE. Is it still before the Senate?

Mr. BACON. If the Senator will permit me to make a statement——

The PRESIDENT pro tempore. The Chair thinks the bill is not before the Senate.

Mr. LODGE. The bill is not before the Senate. That is precisely what I meant. It can not be brought before the Senate unless recalled by action of the Senate.

Mr. BACON. If the Senator will pardon me, the bill has never left the Senate, and the question is as to what shape it should be in when it does leave the Senate. Of course we want the bill which goes to the House to express the action of the Senate.

Mr. LODGE. I have not any idea what the Senator is going to discuss on the bill, but this is a very important question of order.

Mr. BACON. I understand it.

Mr. LODGE. The bill has passed the Senate.

Mr. BACON. I am rising to a question of order and have the floor.

Mr. LODGE. The bill has passed the Senate, and it can not come before the Senate again for debate unless it is recalled. It does not matter whether it has gone out of the Secretary's office or not, we shall have to recall it and bring it before us.

Mr. BACON. Mr. President, I have the floor, and I have a right to state my case.

Mr. LODGE. I rise to a point of order, which is, I think, always in order.

Mr. BACON. I am on a point of order now.

Mr. LODGE. I make the point of order that all debate on the bill is out of order.

Mr. DANIEL. Mr. President, I rise to a point of order. When one Senator rises to a point of order another Senator can not debate the case while he is on the floor.

Mr. BACON. I have a right at least to state my point of order.

The PRESIDENT pro tempore. The Senator from Georgia is recognized and has the floor.

Mr. BACON. The point of order I am making is that when the bill goes from the Senate to the House it should properly express the action of the Senate, and the question arises as to what is the shape in which the bill passed the Senate. I am not rising for the purpose of debating the bill or for the purpose of seeking to make any change in the bill, but simply as a matter of order, to ascertain what is the shape of the bill. I was proceeding to state the action of the Senate out of which this question arises.

As I was stating at the time the Senator from Massachusetts interrupted me, the Senate, upon my motion, struck out all of the bill beginning at section 19 and extending to section 37. That action was never rescinded. Therefore nothing which was within the scope of that amendment has in any manner been restored to the bill except so far as it contained matter identical with the amendment subsequently adopted on the motion of the Senator from California [Mr. BARD].

Now, the point is that the amendment offered by the Senator from Utah [Mr. KEARNS], which was a printed amendment, expressly states that it was an amendment to take the place of section 19 of the bill. It reads this way:

Amendment intended to be proposed by Mr. KEARNS to the bill (H. R. 14749) to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States, viz: Strike out section 19 and insert in lieu thereof as section 19 the following:

SEC. 19. That all of that portion of Arizona Territory which lies north and west of the center of the Colorado River is hereby annexed to and shall hereafter be a part of the State of Utah, and that the inhabitants of all the remaining part of the area of the United States now constituting the Territories of Arizona and New Mexico, as at present described, may become the State of Arizona as hereinafter provided.

Mr. President, the point is simply this: If that amendment is the amendment upon which the Senate acted, that amendment went out when the action of the Senate was taken adopting the amendment to strike out, which was made by myself. Now, the point is raised on that amendment. I have, as every Senator has the right to do, inspected the bill as it has been prepared by the clerks, of course, for the purpose of transmission to the House. It is certainly the province of a Senator to see that the bill is in a shape which expresses the action of the Senate, and to call the attention of the Senate to it if there is anything which indicates that the bill is about to be transmitted in a shape in which it did not pass.

Now, whether the amendment which is in print—and was printed before it was offered by the Senator from Utah—expresses the action of the Senate or not, I am not prepared to say. I can only go by what are the terms of the amendment as it was printed and laid on our desks prior to our action.

Mr. CULLOM. Let me ask the Senator a question. Has the Senator seen the bill as it left the Senate or as the Senate left it last night?

Mr. BACON. I have seen the bill as it has been prepared by the clerical force for the purpose of transmission to the House. It includes the amendment offered by the Senator from Utah, which took from the Territory of Arizona 7,000 square miles and added it to the State of Utah. I am certain——

Mr. CULLOM. Mr. President——

Mr. BACON. I am certain of one thing, if the Senator will please pardon me.

Mr. CULLOM. Certainly; I only wanted to know the fact.

Mr. BACON. I am sure of one thing, however the fact may be, that those of us who voted on the amendment to strike out from section 19 to section 37 thought that amendment carried with it at the time the amendment of the Senator from Utah, and that that amendment had been excluded from the bill.

Now, as to what is the fact I am not prepared to say, but in my view of it it is certainly competent that the Senate should have it brought to its attention that it may determine whether that amendment is still in the bill or whether it went out, having been excluded by the amendment striking out those sections.

EXECUTIVE SESSION.

Mr. CULLOM. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After two hours and fifty minutes spent in executive session the doors were reopened, and (at 4 o'clock and 55 minutes p. m.) the Senate adjourned until to-morrow, Thursday, February 9, 1905, at 12 o'clock m.

NOMINATIONS.

Executive nominations received by the Senate February 8, 1905.

UNITED STATES MARSHAL.

George G. Perry, of Alaska, to be United States marshal for the district of Alaska, Division No. 3. A reappointment, his term having expired June 5, 1904.

CONSUL-GENERAL.

David F. Wilber, of New York, now consul at Barbados, West Indies, to be consul-general of the United States at Singapore, Straits Settlements, vice Oscar F. Williams, removed.

PROMOTIONS IN THE NAVY.

Infantry Arm.

First Lieut. Stanley H. Ford, Twenty-fifth Infantry, to be captain, with rank from February 3, 1905, vice Carnahan, Fifth Infantry, detailed as paymaster.

PROMOTIONS IN THE NAVY.

Lieut. Commander George S. Willits to be a commander in the Navy, from the 13th day of September, 1904, vice Commander Nathan E. Niles, promoted.

Lieut. Webster A. Edgar to be a lieutenant-commander in the Navy, from the 1st day of January, 1905, to fill a vacancy created in that grade by the act of Congress approved March 3, 1903.

COLLECTORS OF CUSTOMS.

William L. Short, of Mississippi, to be collector of customs for the district of Vicksburg, in the State of Mississippi, to succeed Albert L. Pierce, resigned.

Frank W. Leach, of New Jersey, to be collector of customs for the district of Little Egg Harbor, in the State of New Jersey, to succeed Samuel P. Bartlett, whose term of office will expire by limitation February 19, 1905.

SURVEYOR-GENERAL.

Edward P. Kingsbury, of Washington, to be surveyor-general of Washington, his term having expired December 19, 1903. (Reappointment.)

RECEIVER OF PUBLIC MONEYS.

Hugh Taylor, of Castle Rock, Colo., to be receiver of public moneys at Denver, Colo., vice Benjamin K. Kimberly, whose term expired December 21, 1904.

POSTMASTERS.

CALIFORNIA.

George B. Hannahs to be postmaster at San Jacinto, in the county of Riverside and State of California, in place of Arthur G. Munn. Incumbent's commission expired January 31, 1905.

Jane E. Loveland to be postmaster at Menlo Park, in the county of San Mateo and State of California, in place of Jane E. Loveland. Incumbent's commission expired December 20, 1904.

COLORADO.

David E. Gray to be postmaster at Greeley, in the county of Weld and State of Colorado, in place of Albert W. Durkee. Incumbent's commission expired December 20, 1904.

GEORGIA.

Thomas A. Jones to be postmaster at Elberton, in the county of Elbert and State of Georgia, in place of Carroll M. Heard, removed.

Leon P. Wimberly to be postmaster at Abbeville, in the county of Wilcox and State of Georgia, in place of Ida R. Wimberly, deceased.

ILLINOIS.

O. E. Baldwin to be postmaster at Cobden, in the county of Union and State of Illinois, in place of Albert W. James, resigned.

INDIANA.

Herman Schumacher to be postmaster at Newburg, in the county of Warrick and State of Indiana. Office became Presidential October 1, 1904.

LOUISIANA.

Isabel C. Taylor to be postmaster at Mansfield, in the parish of De Soto and State of Louisiana, in place of Isabel C. Taylor. Incumbent's commission expired January 29, 1905.

MASSACHUSETTS.

Benjamin Derby, jr., to be postmaster at Concord Junction, in the county of Middlesex and State of Massachusetts, in place of Benjamin Derby, jr. Incumbent's commission expired January 31, 1905.

Frederic Robbins to be postmaster at Watertown, in the county of Middlesex and State of Massachusetts, in place of Frederic Robbins. Incumbent's commission expired April 27, 1904.

Herbert H. Russell to be postmaster at Waverley, in the county of Middlesex and State of Massachusetts, in place of Herbert H. Russell. Incumbent's commission expires February 11, 1905.

Leonard A. Saville to be postmaster at Lexington, in the county of Middlesex and State of Massachusetts, in place of Leonard A. Saville. Incumbent's commission expired January 31, 1905.

MINNESOTA.

George E. Kirkpatrick to be postmaster at Rushford, in the county of Fillmore and State of Minnesota, in place of George E. Kirkpatrick. Incumbent's commission expired January 31, 1905.

MONTANA.

John Jackson, jr., to be postmaster at Kendall, in the county of Fergus and State of Montana. Office became Presidential January 1, 1905.

NEW JERSEY.

Alexander B. Roberts to be postmaster at Tenafly, in the county of Bergen and State of New Jersey, in place of John H. De Mott, removed.

OKLAHOMA.

William L. Stalnaker to be postmaster at Tonkawa, in the county of Kay and Territory of Oklahoma, in place of William L. Stalnaker. Incumbent's commission expired January 31, 1905.

PENNSYLVANIA.

William F. Eckbert, jr., to be postmaster at Lewistown, in the county of Mifflin and State of Pennsylvania, in place of George F. Stackpole, removed.

David Maclay to be postmaster at Chambersburg, in the county of Franklin and State of Pennsylvania, in place of Moses A. Foltz. Incumbent's commission expired February 14, 1903.

TENNESSEE.

Daniel W. Starnes to be postmaster at Lawrenceburg, in the county of Lawrence and State of Tennessee, in place of Joseph B. Schade. Incumbent's commission expired December 20, 1904.

TEXAS.

Mary S. Parish to be postmaster at Huntsville, in the county of Walker and State of Texas, in place of Mary S. Parish. Incumbent's commission expired December 14, 1903.

CONFIRMATIONS.

Executive nominations confirmed by the Senate February 8, 1905.

AGENT FOR SALMON FISHERIES.

John N. Cobb, of Pennsylvania, to be assistant agent for the protection of the salmon fisheries of Alaska in the Department of Commerce and Labor.

POSTMASTERS.

IOWA.

William W. De Long to be postmaster at Eddyville, in the county of Wapello and State of Iowa.

Chester A. Van Scoy to be postmaster at Woodbine, in the county of Harrison and State of Iowa.

Jacob H. Wolf to be postmaster at Primghar, in the county of O'Brien and State of Iowa.

MICHIGAN.

Robert E. Newville to be postmaster at Boyne, in the county of Charlevoix and State of Michigan.

MINNESOTA.

Thomas A. Bury to be postmaster at Two Harbors, in the county of Lake and State of Minnesota.

Hattie J. Hodgson to be postmaster at Herman, in the county of Grant and State of Minnesota.

WISCONSIN.

James R. Shaver to be postmaster at Augusta, in the county of Eau Claire and State of Wisconsin.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *February 8, 1905.*

The House met at 11 a. m.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of yesterday's proceedings was read and approved.

RAILROAD-RATE BILL.

The SPEAKER. Under the order of the House the Chair declares the House to be in Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 18588; and the gentleman from New Hampshire [Mr. CURRIER] will take the chair.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 18588, the railroad-rate bill, and the gentleman from Louisiana is recognized.

Mr. DAVEY of Louisiana. Mr. Chairman, I yield seven minutes to the gentleman from Massachusetts [Mr. THAYER].

The CHAIRMAN. The gentleman from Massachusetts is recognized for seven minutes.

Mr. THAYER. Mr. Chairman, I wish first to congratulate the Republican party, and especially the majority of the Committee on Interstate and Foreign Commerce, on adopting a purely Democratic measure, a measure that was advanced first and solely by the Democratic party, a measure to which that party has been committed for a long time. I am also pleased to congratulate the President of the United States on his wisdom in accepting this Democratic measure and forcing it upon the attention of Congress in his last annual message. Less than two weeks ago, in answer to the suggestion of the President in his message, it was reported here that the majority of the Interstate and Foreign Commerce Committee had framed a bill answering the suggestions and requirements of the President on this question of fixing rates. It was known as the Hepburn bill. The Democratic measure, in substance, calls for legislation which would permit the Interstate Commerce Commission, when they found the rates of common carriers unreasonable, to so declare it and also to go further, and this is the vital point—declare what were reasonable rates. The first of these two propositions was included in the Hepburn bill; but the other proposition, the one all-important and which marks this present bill of some count, was also Democratic, and was the important proposition which the President forced upon the attention of Congress, and was not in the Hepburn bill. This proposition, briefly stated, provided that when this Commission had found that a rate was unreasonable and extortionate they should at once declare what was reasonable, and that that declaration should remain until the appellate court in reviewing the decree of the Commission should determine that the finding of the Commission was unreasonable and unlawful.

This last provision, which was in large measure in my judgment the thing required under present conditions, was not contained in the Hepburn bill, which was indorsed, as I understand, by a large majority of the majority members of the Interstate and Foreign Commerce Committee. It was told here that that bill, known as the "Hepburn bill," which had been referred to the Committee on Interstate and Foreign Commerce, would soon be reported to this House. We were expecting it to-day. This was less than two weeks ago, but it seems that from some source, I am informed that it came from the White House, that the declaration was made that that bill being a sort of veneered, galvanized bill in place of the real thing, could not become law with the assent and approbation of the President. He would not allow it to become the law. Therefore there was a halt called and a change in the bill demanded, and while it has been said here that the Hepburn bill was on all fours with the Townsend bill, in my judgment the Hepburn bill no more resembles the Townsend bill, the Administration bill, the Democratic bill, than a jack rabbit does a race horse. The great difference between the two bills is this: The bill now before the House, known as the "Townsend bill," permits the Commission to state what is a reasonable rate and that that statement shall be the controlling factor until it is changed on writ of error, while the Hepburn bill permitted the Commission to say what was reasonable, but then left to the railroads, the common carriers, an opportunity perhaps requiring two years to determine whether that should be the established rate or not. There is the difference between the two bills. Now, I listened yesterday with a great deal of interest to my colleague from Massachusetts [Mr. MCCALL], a gentleman whose judgment I usually accept, an able and independent thinker and usually a careful reasoner. I was surprised to hear from him the long list of troubles he prophesied would arise if this bill was enacted

into law. Mr. Chairman, if I believed that one-tenth of those evils and woes would come if this bill was enacted into law and the law vigorously enforced, I would not vote for the bill.

I do not believe in the National Government directly or indirectly interfering in the railroads' business to the extent of fixing their rates and charges generally.

I do not believe that if this bill is enacted into law that any considerable per cent of the rates of the railroads of this country will be changed one jot or tittle. I believe that the great majority of the rates on the railroads of this country are proper and just now. I do not believe that these great combinations and systems would carry on their business as common carriers if they were imposing on the public. I believe on investigation, if investigation be had, it will be found that in most instances the rates are proper and correct. But the fact remains, Mr. Chairman, that in some isolated cases, some few cases as compared with the whole, hardships are forced upon the shippers by the fixing of exorbitant rates and charges. Now, what will be the effect if this law is enacted and goes into force? Those roads, that know themselves better than anyone else, when they are demanding an extortionate price for cartage from one place to another, will at once undertake to set their house in order and remedy those wrongs, knowing that if they do not do so application will be made to this Interstate and Foreign Commerce Commission, and the matter will be investigated and the rate changed.

If I believed that we were going into the business of permitting this Commission to step in in the place of the directors and officers of the railroads of this country and fix the rates regardless of what the railroads themselves desire, I never would vote for it, but no such result will follow. This bill will in large measure be an admonition to the railroads that they must do the right thing and the reasonable thing in fixing their rates. [Applause.]

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. THAYER] has expired.

Mr. DAVEY of Louisiana. Mr. Chairman, I now yield to the gentleman from New York [Mr. SHOBER].

Mr. SHOBER. Mr. Chairman, it is a matter of regret to discover that the minority is in an embarrassing position on this great question. Through an error of judgment, or for some other reason not quite clear, a great opportunity has been lost on this side of the Chamber, the opportunity of putting the Democratic party in line with its declarations of several national conventions past on so great a subject as this, a subject that touches the hearths and homes of every man, woman, and child in this great country. The fact that the opportunity has been lost and this grievous mistake has been made is the more regrettable when we remember, as those on this side of the Chamber have good reason to remember, that a similar mistake and a similar loss of opportunity occurred when the convention met in St. Louis eight months ago. The party leaders then and the leaders now have failed to heed the demands of the common people, have ignored their preferences and set aside their wishes.

Mr. Chairman, gentlemen on this side of the Chamber will remember that a year ago it was predicted we had for 1904 a Democratic year. It was predicted that never before in the history of Democracy was the time more ripe and the opportunity more propitious for Democratic success at the polls than we then had. For eight years our party had fought in the people's cause more strenuously than it had in half a century prior to that time. We were opposed to special privileges, to illegal combinations of capital, to the growing and grasping power of the trusts. We had declared for larger and greater measures calculated to relieve the people from the burdens which the trusts were daily imposing on them. On this very subject of governmental control of the railroad interests we had declared emphatically time and time again. The people knew this and they looked to the Democratic party, as they had a right to look, to give them this relief. They went further and chose a candidate who as a standard bearer would lead the party to victory and see to it that their just demands were complied with. The demand for this candidate came up from all the great centers of industry. It came from the men who worked and the men who toiled under unfavorable conditions, it came from the factory and from the farm, from organized labor and from unorganized labor.

And, in my judgment, the candidate chosen by these masses of the people would have been a logical candidate. He had always stood for the things that the people desired and needed. He had fought the battles of the people from the Pacific coast to the Atlantic by means of a great chain of newspapers, and his fight for them had not been without beneficent results. He had always been a Democrat. He supported Cleveland in three campaigns, and in 1896 he furnished the only newspapers of metropolitan influence to support the Democratic ticket. In that campaign of 1896 he made sacrifices for our party beside which the efforts of the average partisan pale into insignificance. In the subsequent campaign of 1900, at the earnest solicitation of the Democratic national committee, he established another paper in Chicago, avowedly for the purpose of supporting Democracy and the people's cause. And so through nearly twenty years he has stood prominently forth as a deep thinker on all public questions, using his great influence in behalf of the people and their rights and consistently earning the proud title by which he is best known—that of the people's champion. I repeat, gentlemen, that when the people looked for the party to select a standard bearer they were wise in giving their preference to their champion.

This desire on the part of the people found its first public expression in the convention held in Rhode Island a year ago. The feeling spread from that little State over into Massachusetts, through Connecticut, and into New Jersey. Despite all that is said to the contrary, it permeated my own State (New York). It went out through the West and the great Middle West, through Indiana and through Illinois. It leaped the great river and found an echo on the Pacific Coast, where the sentiment was united among the rank and file of the party that the principles for which we had stood should be reaffirmed that Democracy should put a bold front upon the situation, and that the man who for so long had stood for these principles and fought for them should be chosen to represent them in the capital of the nation. The corporations doing business in defiance of law did not want him. He was too "dangerous" a man to suit their convenience and their robbing methods. None of the trusts wanted him. The politicians did not want him and the machine eschewed him. A great hue and cry was raised and incidentally, if we are to believe the words of Mr. August Belmont, an immense sum of money was also raised for the purpose of defeating the people's will. Slanderous stories were circulated. Every trick and artifice known to the professional politician was resorted to. By means discreditable, if not criminal, the delegation from New Jersey was stolen from the people's choice; the delegation from Connecticut as well, and the delegation from Indiana. Their tricks, and their cajolery, and their questionable methods did not stop here.

I am sorry to say that some gentlemen on this side of the Chamber were lured away with false hopes and falser promises from the position which their constituents hoped they would take. But in spite of all this fraud, trickery, and treachery, in spite of the slanders uttered and the lies that were told, in spite of the united efforts of the Belmonts and the Ryans and the Rogers and the Cord Meyers, in spite of every effort on the part of privileged wealth to defeat the will of the people, I am proud to say that that great commoner who was named by the Rhode Island convention, a colleague of mine from the State of New York, WILLIAM RANDOLPH HEARST, went into the St. Louis convention and polled more than 200 votes.

Mr. Chairman, I believe a mistake was made then and a great opportunity lost to the Democracy. If I be asked as to whether or not the result would have differed from that recorded last November had Mr. HEARST been the nominee, I would reply that prior to the St. Louis convention Connecticut, New Jersey, Indiana, and Illinois were all admittedly debatable ground, New York practically lost to the Republicans, and South Dakota, Montana, Nevada, California, Wisconsin, and other Western States possible to obtain for Democracy. But two days after the St. Louis convention the veriest novice in politics knew just what was going to happen and just what did happen.

No one supposes for a moment that Missouri would have been lost to the Democratic column if the party had not been dominated by Wall street, as we all know it was. I will go further and call attention to the result in Massachusetts. There a Democratic governor was elected on the very principles which WILLIAM RANDOLPH HEARST stood for and was identified with. In fact it is generally conceded that Mr. HEARST's vigorous support of the Democratic candidate for governor in that State resulted in his election. Is it not reasonable to suppose that a like result would have been reached had he been the candidate for President? The same thing may be said of Minnesota, where a Democratic governor was elected on almost identical lines. It is interesting to note in this connection the difference in the vote cast for the Democratic candidate for President last year and the Democratic candidates for governor in the various States where elections for governors occurred. The total mounts up to more than a million votes in twenty-four States of the Union only. If this vote had been placed in the Democratic Presidential column, as we had a right to expect it would

be placed, and the same proportion has been maintained in all the States, what a different result we would have had. I give the figures in the following table:

Table showing the difference in the vote between the Democratic candidate for President and the Democratic candidate for governor in certain States where the election of governors took place in 1904.

[The figures are given by pluralities.]

State.	Democratic candidate for governor.	Against Parker.
Michigan	Ferris	167,487
Minnesota	Johnson	152,699
Massachusetts	Douglas	128,065
Wisconsin	Peck	104,125
New York	Herrick	94,992
Nebraska	Berge	77,539
Washington	Turner	56,656
Kansas	Dale	56,353
Missouri	Folk	55,237
Colorado	Adams	45,650
New Jersey	Black	28,954
West Virginia	Cornwell	22,675
Montana	Toole	21,585
Utah	Moyle	17,241
Rhode Island	Garvin	15,910
Connecticut	Robertson	12,218
Idaho	Heitfeld	11,698
Indiana	Kern	9,580
North Dakota	Hegge	7,238
Wyoming	Osborne	5,936
Illinois	Sturger	5,894
South Dakota	Grill	6,325
New Hampshire	Hollis	4,451
Delaware	Pennewill	1,602
Total		1,112,509

And why? Because while the St. Louis platform was good enough and great enough in the estimation of the people it became no more than as sounding bass and tinkling cymbal when voiced to them by the Belmonts and the Ryans and the minions of Wall street who had charge of it.

And, Mr. Chairman, as I believe a mistake was made then, so I believe a mistake is being made to-day by the minority Members of this House. We all knew that legislation of this character was to be brought up at this session. It has been called for by a Republican President, who, wise in his day and generation, knows that it behooves him, elected as he has been by so stupendous a vote to get on the Democratic wagon and join the popular procession. He is wise enough to know that they were not all Republicans who voted for him, and that the signal victory accorded him was not so much preference for him and his party as it was a rebuke to the domination of the Democratic party by the men in charge last year. Men who, traitors to the party in 1896 and in 1900, led only to lead to defeat.

Let me emphasize this further by calling attention to the fact that the total popular vote for President in 1904 was 13,523,518 In 1900 it was greater by nearly half a million votes, being 13,961,566. Now note the difference—in 1904 the Republican candidate received only 7,621,985, as against 7,207,923 cast for his predecessor in 1900, barely the natural increase to be expected in four years. Going a little further we find that where the Democratic candidate for President received 6,358,133 votes in 1900 his successor last year received only 5,098,255—a million and a quarter votes less under the leadership which dominated our party.

Figures do not lie, and from these figures I gather that 1,250,000 Democratic voters stayed at home in disgust over the mistake made in the St. Louis convention. Now add the 1,250,000 who stayed at home through disgust to the 1,112,000 who voted for Democratic governors and a Republican President in their desire to rebuke the Democratic leadership last year and mark the vast difference we would have had in the general result had the people been given the candidate they desired to carry out their will.

I say again that I regret and deplore the fact that a mistake is being made on this measure, and, strange as it may seem, the mistake revolves around the personality of WILLIAM RANDOLPH HEARST. Nearly a year ago he introduced a bill touching this subject of interstate commerce, which, in the judgment of men more competent to form an opinion than I, has been pronounced entirely competent, wholly adequate, thoroughly Democratic, and absolutely effective. The Hearst bill is a measure drawn from the experience of two years' litigation with the greatest railroad combination this country has ever seen—a combination not of railroads alone, but of corporations controlling one of the very necessaries of life. It is a measure which might well be taken as the party utterance on this great question, placing us in the vanguard of the movement and not simply trailing along in the rear of our opponents. Had it been taken up by our party it would have forced the Republicans to take it or leave it and go to the country on the record. It would have enabled us to draw a sharp line of distinction between the bill they offer for this much-needed relief and our own. Oh, Mr. Chairman, the opportunity was ours to stand boldly out as advocating a proper and competent measure; the opportunity was ours to place our party in a great and glorious light before the country as freed forever from such leadership as that which we had last year and which, as far as I know, has had to do with placing us in this unenviable position.

Gentlemen say that they don't know anything about this bill and ask why is not Mr. HEARST here to explain it. As to the latter, I will say that Mr. HEARST was more or less absent yesterday and is absent to-day attending the important arguments being made before the Interstate Commerce Commission on this very coal-trust fight which has been largely instrumental in the making of this bill. As to the former I will say that if the gentlemen did not inform themselves as to what was going on in this most important legislation it is not creditable to them, and their lack of knowledge certainly should not be charged upon the advocates of this measure. The bill has been on file since last March, and Mr. HEARST appeared before the committee on two different occasions and fully explained it. That hearing is in print, and has been for three weeks, making a report of more than 15,000 words in length, and gentlemen who say they don't know anything about it confess either to their negligence or their indifference. The voters of the country have manifested keener interest than the gentlemen confessing ignorance. I myself have been deluged with requests for copies of the bill, and I know that from all over the country such demands have been made upon my colleague who introduced it. The record bears witness to the fact that petitions have been received from all over the United States praying for the passage of this bill, and I myself had the pleasure a few days ago of filing a petition containing several hundred names, from the Eighth Congressional district of Iowa, represented, I believe, by the honored chairman of the Committee on Interstate and Foreign Commerce.

Time does not permit me to discuss at length either this or any other of the measures that are before the House, not that it can be properly said that the Hearst bill is before the House. Had it not been that the gentleman from Missouri [Mr. SHACKLEFORD] and the gentleman from Florida [Mr. LAMAR] had the courage of their convictions, I doubt if any of us would have had the opportunity at this time to even so much as mention the Hearst bill. Why this should be so I do not pretend to explain. The fact remains that it is not, under the rule, subject to a vote.

It is curious to recall the history of the so-called "Davey-Williams bill" in this connection. I am told that at a conference which was not attended by all of the minority members of the committee the Davey-Williams bill was conceived and born. This conference took place on a Saturday and was continued over the Sunday following. On the Monday succeeding Mr. HEARST was accorded the privilege by the committee to appear and explain his bill. He did so, as I have said, in a hearing embracing more than 15,000 words. At that time the Davey-Williams bill was made up in two sections, covering about one page of typewritten matter. Subsequently it was brought into caucus and adopted as the expressions of the Democrats on interstate-commerce legislation as far as it went, giving us the privilege of looking further and seeking to obtain a wider and more comprehensive measure.

The minority members of the committee, with the exception of Messrs. SHACKLEFORD and LAMAR, submitted this inadequate, incomprehensive, and inconsequential measure as the substitute, but adding thereto some provisions not discussed in the caucus. And thus it was that the Hearst bill, or any other adequate and competent measure, could not be submitted to the House. Now, the reason for all this I leave to the judgment of the people at large. Why it was done I do not presume to say, but I do know that the effect of such action at this time and of the prior action in the convention at St. Louis stands out as conspicuously as the setting of false beacons on a treacherous shore to lure the ship to its destruction. Why do wreckers set false beacons on a treacherous shore? That they may loot and plunder.

Mr. Chairman, I yield to no man in my desire for immediate legislation looking to the control of these great highways of commerce and putting every other question aside in view of the urgent need therefor, I wish to say that not only will I vote for the so-called "Davey-Williams bill," wishing that I had a better bill to vote for, but I will also vote for the majority measure rather than not vote for legislation upon this important question at all.

Mr. DAVEY of Louisiana. I yield to the gentleman from Tennessee [Mr. PADGETT].

Mr. PADGETT. Mr. Chairman, it is generally understood and conceded that the pending measure is the most important and far-reaching in its effect and consequences of any legislation that has engaged the attention and challenged the thought and consideration of the American Congress, as well as the American people, for a generation past. The measure deserves the best thought and most serious consideration of the Congress. The most enlightened wisdom and conservative judgment of the membership of the House should be enlisted and availed of in the proper solution of this question. And yet, Mr. Chairman, with all of its importance and seriousness, when we consider the rule which has been adopted by the majority in control of the House and the situation in which we are placed it becomes ludicrous. It reminds one very much of the Dutch justice in the trial of a cause pending before him. The witnesses had testified and the lawyers had argued the case and the justice, raising his eyes above his glasses and surveying the crowd with a wiseacre look, said: "Gentlemen, the court has heard the proof and the argument of the lawyers and will take the case under consideration until 3 o'clock next Thursday afternoon, at which time the court will decide the case in favor of the plaintiff." As ludicrous and ridiculous as such an announcement would be from a court trying a cause, it is not more so than the action of this House in its adoption of the rule under which we are now proceeding. A great question is agitating the public and challenging the best thought and patriotism of the American people—a measure which in its results may affect for good or bad, for weal or woe, the business and industries of our whole country. The President has outlined his views upon the matter.

The Democrats of this House have declared their purpose to interpose no captious or partisan objections, also declaring their intention to support the policies and purposes of the President. Under these circumstances the only question before this House should be how to perfect the measure to its highest efficiency, and for this purpose the bill should be submitted to the House in order that it might receive the benefit of the best thought and wisdom of the membership of the House. But this is denied. No opportunity is given whereby the membership of the House may exercise either its thought, judgment, or patriotism in perfecting the measure. The bill now under consideration is before the House upon the recommendation of a majority of the committee, and if reports are to be credited the bill does not represent the individual judgment of all the members of the majority of the committee. The minority of the committee do not approve or indorse all the provisions of the bill. And yet, under these circumstances, when there is no partisan politics in the measure and no effort to inject any into it, the Committee on Rules sees proper to present to the House and the majority in control sees proper to adopt a rule providing for less than three days' debate and at the same time providing that the bill shall in no wise be amended and that it shall not be in order to entertain a motion to amend the bill in any particular. It is true that the rule provides that the bill favored by a portion of the minority of the committee may be offered and voted upon as a substitute.

At the same time the rules deny any opportunity to amend or perfect this substitute, and it is well known that the majority in control of this House would not under any circumstances or conditions permit the passage or even serious consideration for passage of the proposed substitute. Under these circumstances it may be asked, Why allow debate at all? Of what use or service can it be? The only answer is that debate is absolutely sterile and fruitless of results. It is a mere sham and a delusion. Of what practical use or benefit can it be to consume three days debating the bill under an ironclad rule prohibiting absolutely every amendment? We might as well spend the time beating the air, and perhaps as profitably. It matters not what suggestions might be offered, how important, valuable, or wise they may be. They profit nothing and avail nothing to the improvement or betterment of this bill, so far as the action by this House is concerned. It would have been just as wise and as patriotic and served just as useful a purpose and would have commanded the respect of thoughtful people just as much for the order of the provisions of the rule to have been reversed and provided that the bill should be first voted upon and after its passage the House should have the privilege of debating it for the same length of time. In fact, this latter course would have in its favor that it would expedite the bill reaching the Senate. It seems to me, Mr. Chairman, that this occasion, being free from partisan politics, affords a suitable opportunity to call to the attention of the House and the country and impress upon them the harshness and legislative iniquity of such rules. Why was this rule adopted? What was the necessity for it?

Is there no wisdom in the membership of the House and are the Members of the House incapable of offering valuable suggestions? When a great measure affecting the material and industrial interests and welfare of all the people of this great country comes before this House, is it sufficient that the measure shall receive the indorsement of ten or eleven members of a committee, and thereafter the membership of the House shall be denied all opportunity of contributing anything toward the perfecting of the measure and must receive it and vote for it in the very words of these few members of a committee? Surely, Mr. Chairman, the House is in a lamentable condition and indeed are the Members thereof insignificant in legislation when such methods are pursued. Under the Constitution the House and the Senate were coordinate branches of equal dignity in the legislative department. It is no wonder that the press of the country and the public opinion of the country are losing respect for the dignity of the House and confidence in the ability of its membership when such methods are pursued; and the House, by its own action, shirks its opportunity of deliberate consideration of great measures and shifts the responsibility upon the Senate. Indeed, sir, it is no wonder that the distance in dignity, importance, and responsibility between the two Houses is constantly widening in the opinion of the people to the disadvantage of this House. Before this House will regain its prestige and occupy its rightly deserved position of importance and responsibility it must cease from such methods and restore to its membership the opportunity and the responsibility of individual action and avail itself of the best thought and wisdom and patriotism of its individual membership.

Mr. Chairman, in his last annual message to the Congress, the President made the following suggestions and recommendations:

> We must strive to keep the highways of commerce open to all on equal terms; and to do this it is necessary to put a complete stop to all rebates. Whether the shipper or the railroad is to blame makes no difference, the rebate must be stopped; the abuses of the private-car and private terminal-track and side-track systems must be stopped; and the legislation of the Fifty-eighth Congress which declares it to be unlawful for any person or corporation to offer, grant, give, solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce whereby such property shall, by any device whatever, be transported at a less rate than that named in the tariffs published by the carrier must be enforced. * * * While I am of the opinion that at present it would be undesirable, if it were not impracticable, finally to clothe the Commission with general authority to fix railroad rates, I do believe that, as a fair security to shippers, the Commission should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place, the ruling of the Commission to take effect immediately and to obtain unless and until it is reversed by the court of review.

In an address recently delivered by the President at Philadelphia he is quoted as saying:

> This supervision should not take the form of violent and ill-advised interference—

And there should be—

> effort to secure proper supervision and regulation of corporate activity by the Government, not only because it is for the interest of the community as a whole that there should be this supervision and regulation, but because in the long run it will be in the interest above all of the very people who often betray alarm and anger when the proposition is first made.

I wish to say, Mr. Chairman, that I desire cordially to express my indorsement and approval of the above. I believe that the recommendation is wise and patriotic, and that if legislation, safeguarded and protected as suggested above by the President, should be passed by the Congress, it will promote the interest and subserve the welfare, not only of the great body of the American citizenship, but of the railroads as well. In the same address the President is quoted as saying:

> All great business concerns are engaged in interstate commerce, and it was beyond question the intention of the founders of our Government that interstate commerce in all its branches and aspects should be under national and not State control.

Before proceeding to discuss the pending bill I must digress enough to say that I do not indorse or approve the length and breadth of this last statement of the President, nor assent that the language used by him properly and accurately defines and limits interstate commerce or the policy of the National Government in relation thereto. Every great mercantile establishment and every manufacturing concern and many other private industrial enterprises are engaged in interstate commerce; many of these are the enterprises of individual citizens; many of them are under the control of strictly private corporations, and many of them are firms and copartnerships of individuals.

I am not content, Mr. Chairman, with reference to all this class and character of industrial enterprise and interstate commerce, to withhold my assent to the proposition as announced by the President, but I must go further and protest that it would not be a proper policy or a wise exercise of Federal

authority to attempt to exercise Federal supervision over this character of interstate commerce. I believe, sir, that this properly belongs and rightly should be left to the supervision and control of State authority, and that it would be not only unwise but improper for the Federal Government to attempt to control these strictly private enterprises as interstate commerce.

There seems to be, Mr. Chairman, a very general and widespread demand for this legislation—so much so that it has no partisan tinge to it. The President has declared for it; the Democrats have declared in favor of it; also many Republicans. The trend seems to be strongly in favor of legislation. It occurs to me, Mr. Chairman, that this is the time and the occasion and the opportunity to rise to the highest level of a judicious, conservative, and wise consideration of this question. We should lay hold of the question with a firm grasp and at the same time we should use every effort to secure wise and safe legislation. When the train is running down grade a judicious application of the brakes is essential to safety. When we have before us a great measure like this one, which reaches out and touches every industrial pursuit in the country, we should have the benefit of the thought and suggestion and wisdom of every member of the legislative body to perfect the measure and secure for the country the best results. It is to be regretted that under the leadership of this House the membership of the House are deprived of every such opportunity.

Let me submit to the consideration of this House some data and statistics showing the magnitude and importance of this question and its far-reaching effects and results. The official statistics for the fiscal year ending June 30, 1904, have not yet been fully tabulated and are not available, and I shall use, to some extent, statistics for the fiscal year ending June 30, 1903. It appears from the report of the Interstate Commission, issued in December last, that on the 30th of June, 1904, there were in the United States about 211,000 miles of railway and that the Commission had received reports from 209,202 miles of railway in operation. The gross earnings from this mileage were $1,966,633,821. The gross earnings from the passenger service amounted to $539,428,374, and the earnings from the freight service amounted to $1,377,684,976. Earnings from other sources amounted to $49,520,471. The operating expenses amounted to $1,332,382,948. These figures, Mr. Chairman, if we can grasp the enormity thereof, show the immensity of the business interests with which we are dealing. But I desire to submit some additional figures, which afford valuable information and throw light upon this subject. On June 30, 1903, there were in operation on these lines of railway 46,034 locomotive engines. There were 45,300 cars in the passenger service and 1,919,288 freight cars in service. During the fiscal year 1903 there were in the employ of the railroad companies 1,312,537 persons, and the total wages paid amounted to $757,321,415. The number of passengers carried during the fiscal year 1903 was 694,891,535, and the amount of freight hauled was 1,304,394,323 tons. The total capital stock was $6,155,559,032, and the total funded debt was $6,444,431,226, making the total railway capital $12,599,990,258.

It further appears from the report of the Commission that during the fiscal year 1903 there were $2,704,821,163 of capital stock which paid no dividends at all, and that the average rate of dividend on the dividend-paying stock was 5.7 per cent. Of the bonded indebtedness there were $194,295,524 which paid no interest. It further appears from said report that of the stocks and bonds of the railway companies outstanding there were owned by others than the railways the sum of $9,263,897,233, this being the amount owned by individuals and the financial institutions of the country.

I have called attention, Mr. Chairman, to these facts and figures for the purpose of showing the magnitude and immensity of the question with which we are dealing and to emphasize the importance of wise and safe legislation, and also to call attention to the fact that the whole country is interested in the question. There are two important things that we should bear in mind: First, that no legislation should be enacted unreasonable or improperly hostile to these great interests or that does violence thereto; second, that we should remember that these railroad interests reach out into all parts and sections of our country and touch and come in contact with and affect the interests of all the people of the country; that the business of these railways vitally affect and, to a large extent, make or mar the success and prosperity of the agricultural, mercantile, manufacturing, and other industries of all the people, and that it is important that we, as legislators, while safeguarding and doing no violence to the railways, shall see to it that the rights and interests and business of the body of the people are protected in their rights and secured protection and indemnity against unjust discrimination and unfair practices on the part of the railways.

It is claimed, Mr. Chairman, that there is no necessity for this legislation and that there is no occasion why the Government, through its authorized agents, should exercise the power and authority to regulate, in the way and to the limited extent indicated, the rates and charges of the railway companies. It is asserted that the report of the Interstate Commerce Commission shows for the year 1903 an average charge of 2.006 cents per mile per passenger for passenger travel, and a charge of 0.763 of a cent per mile per ton of freight hauled. I desire to call attention to the fact that the general average of traffic rates for the whole country does not prove or establish that the rates and charges are everywhere fair and just and reasonable, and that discriminations and unreasonable rates do not exist as to certain classes of freight or certain classes of shippers or certain localities. It may be, and from the complaints made from all sections of the country by individual citizens and boards of trade and others doubtless is, true that unjust rates are charged and unjust discriminations made which call for and justify regulation and control by the Government. Of the truth of this, from the reports of the Interstate Commerce Commission and the evidences submitted from shippers and commercial bodies all over the country, I do not think there can be any reasonable or substantial doubt. A reasonable general average does not disprove the existence of unjust and unreasonable charges in particular instances and localities. It can very readily be that some classes of shippers and some localities are charged unreasonably high and others unreasonably low, and that this difference amounts to unjust discrimination. Yet the general average would appear reasonable. If we were to take the general average of the temperature of every day in the year it would prove that every day was a balmy and delightful one, if we failed to remember that some days were extremely cold and others very warm.

Mr. Chairman, what are the practices and conditions complained of and what is the present status of legislation? Let us examine these, that we may get a clear and accurate conception of the legislation needed. The existing law prohibits all persons and corporations engaged in interstate commerce from paying or granting and from soliciting, accepting, or receiving rebates in freights. It prohibits the railroad companies from making unjust discriminations against shippers and localities; it prohibits pooling of rates by railroads; it enjoins and directs that all railway rates shall be reasonable. Violation of these provisions is declared a misdemeanor, and subjects the offender to heavy fines, not exceeding $20,000, for each offense. In addition, civil remedies are provided for recovery by civil action of all damages sustained by the injured party. Just here I wish to observe that if the criminal laws were enforced it would remedy many of these evils and stop many of the violations of the law. It is the enforcement and not merely the enactment of law that stops crime.

But independent of, and in addition to, existing law it is necessary and proper that we should have legislation enlarging the power and authority of the Interstate Commerce Commission. This legislation does not rest upon nor is it predicated on the assumption that the railway companies are criminals or that their officers are violating the criminal laws. This legislation is entirely consistent with and in harmony with the assumption of the good faith and honest purposes of the railway officials and management. The law provides that the charges of common carriers for services rendered the public shall be reasonable, and this law is as old as the existence of common carriers. Under the law common carriers are only authorized to charge and collect reasonable compensation. But what is a reasonable compensation is not a given or fixed quantity, but depends upon varying conditions and circumstances, and to determine what is a reasonable charge involves the exercise of judgment and discretion. In a business so vast and extensive and affecting so many varied interests, persons, and localities as are affected by the railroad interests of this country must necessarily occur many questions as to the reasonableness, justness, and legality of charges. The officials of the railway companies may act with either a proper or an improper motive and purpose in fixing tariff schedules, but if we assume that in many instances they act with the best of motives still it is to be expected that many controversies and disputes and differences will arise between the railroads and the shipping communities as to the fairness and reasonableness of the charges.

To adjust these differences and settle these disputes every dictate of justice and proper public policy suggests that the Government should create and maintain a competent and just tribunal authorized and empowered to declare and establish and maintain just and reasonable rates. This contention is in keeping and harmony with all the analogies of law and government. The right of the Government to control and regulate the charges of common carriers is as old as the existence of common carriers. From the very beginning the Government has

denied to common carriers the right or privilege of charging more than a reasonable rate of compensation, and through the instrumentality of the courts has exercised the power to correct the evil. In former times, under the conditions and circumstances then existing, the court, as a Government instrumentality, was adequate to meet the necessities; but under the changed and enlarged conditions of the present time and the magnitude of our commerce in all of its varied departments and industries and a vast multitude of transactions between the public and the railroads as common carriers the courts, as instrumentalities of the Government, are no longer adequate and sufficient suitably to exercise this long-established power of the Government. It is necessary that the Government, in keeping with the progress and advance of the age in all other social and industrial conditions, should take advanced steps for the creation of Government instrumentalities adequate and sufficient to the present needs and conditions, so as to lay hold of and regulate and determine these questions intelligently and properly under existing conditions. The creation of the Interstate Commerce Commission and conferring upon it the power and authority to hear and determine these particular complaints and to declare and decree what is a just and reasonable rate is not an exercise or creation of a new power of government, but is simply the creation of a modern tribunal to exercise an old and well-established principle of law and function of government.

The contention made and the argument advanced in opposition to this legislation that the exercise of this power by the Interstate Commerce Commission is an infringement of private rights and property and that Congress might just as well undertake to fix the sale price of private commodities or the rental value of land under individual ownership is not pertinent or well taken. There is a well-defined and just distinction between railroad companies as public carriers and private property. This distinction is broad and well established. Railroad companies are not and can not claim to be, with any show of legal right, mere private corporations possessed of private property, exercising private rights. They are, in law and of right, public corporations, and it is only as such, exercising public duties and functions, that they can invoke the exercise of eminent domain for the condemnation of private property. The due and proper regulation by the Government, through its constituted tribunal, of the rates of tariff charges of the railway common carriers is eminently just and proper and is a legitimate and rightful exercise of a governmental function to adjust the differences and disputes between its citizens and its corporate creatures. The Government exercises the same right and authority to settle disputes and differences between its citizens and to enforce upon the individual citizen the observance of the duties he owes to his fellow-citizens. Why should not the Government enforce the duties which the railways owe to the citizens through lawfully constituted tribunals adapted and qualified for the proper and adequate enforcement thereof? If the private citizen in the use of his private property erects a nuisance, he violates his duty to his fellow citizen, and the Government, through constituted authority, requires him to observe his duty and will abate the nuisance. If a common carrier charges more than a reasonable compensation, he violates his duty to his fellow-citizen, and the Government should, through a tribunal of the Government, fitted and qualified and adequate for the purpose, require and enforce the common carrier to observe his duty. It seems to me that no legitimate argument can be advanced against the proposition that it is the duty of the Government, under the conditions now existing in our trade and commerce and modern conditions of society, to clothe the Interstate Commerce Commission with the power and authority to investigate complaints made, and after a full hearing to adjudicate and determine what rates are reasonable between shippers and common carriers and between different sections and to establish the rate as reasonable for the purpose of preventing unjust and unlawful rate charges and to prevent unjust discriminations.

The Hon. Edward A. Moseley, secretary of the Interstate Commerce Commission, in an address delivered at Baltimore, Md., used the following language:

> The ideal system of railroad freight rates is that one which produces the greatest revenue from the greatest amount of traffic shipped between the greatest number of places by the greatest number of consignors to the greatest number of consignees. With such rates in force the carrier obtains adequate compensation and the movement of commerce is truly untrammeled and free.
>
> That system of freight rates which operates to diminish the number of shippers or consignees, build up particular localities, and retard the growth of other localities must inevitably, without other causes promoting the same end, produce overshadowing industrial and business monopolies and reduce to a minimum the number of markets of supply and distribution. With such rates in force, commerce itself is restrained and its movement is controlled. The system first mentioned implies equal rates for like service and relative equality for compared services. The other system is based upon different charges for the same service and unjust disparities between rates for dissimilar services.

It seems to me, Mr. Chairman, that this language well expresses the correct conception of the duties of common carriers and the policy which they should pursue, and I think that if the Congress should pass proper legislation along the lines above indicated that it will largely solve the troubles now existing and will establish better and more amicable relations between the shipping public and the railroads. I shall not attempt to set forth by detail the complaints of the public demanding this legislation. It is sufficient to say that many instances are shown and many complaints are made of unreasonable rates charged shippers and unjust discrimination between localities. While it may be true that many of these complaints are not well founded, nevertheless it is proper that the Commission should have power to fully investigate these complaints and to decide what is reasonable and right. Mr. Chairman, I shall not at length discuss the particular bill before us, for such a discussion is futile and idle. It has already been ordered that no amendments shall be made, no suggestions accepted, no provisions added to the bill, however wise or necessary they may be, and no provisions stricken from the bill however improper they may be. The rule submitted by the committee and adopted by the majority in control of the House so provides. With the provisions of the bill which bestow upon the Commission the power to investigate complaints and declare and enforce reasonable rates I am in hearty sympathy. There are other provisions of the bill which do not meet my approval and which I do not believe are calculated to subserve and promote the object sought. Many sections of the bill are for the sole purpose of creating five additional circuit judges and establishing and providing for the organization of a special court to be known as the "court of transportation" and conferring upon it exclusive jurisdiction of the trial of all causes for review of the decisions of the Interstate Commerce Commission and of suits brought by the Interstate Commerce Commission to enforce its findings and orders.

Among other things, this bill authorizes the court of transportation to issue instanter writs of injunction and restraining orders, enjoining and restraining the orders and decrees of the Commission, and provides for the issuance of such injunctions and restraining orders against the Commission at the inception of the litigation, without notice and before hearing or final decree in the case. While I believe that every litigant should have the full benefit of the law and the courts, I think that it would be well and that this law should provide that notice should be given to the Interstate Commerce Commission, so that it might be heard before the granting of injunction and restraining orders. It is said that it is an injustice to the railroad company for the decision of the Commission to be enforced before the final decree of the court, for the reason that if the court should decide that the rate fixed by the Commission is improper, that the railroad company would lose the difference in freight charges between the tariff it was collecting and the tariff fixed by the Commission. It is true that under such circumstances the railroad might lose some freight; but let us look at the whole situation. Before the trial by the Commission and up to the time of its decision it is presumed that the rates fixed by the railroad are correct and the railroad collects the same, and the shippers pay this rate and lose whatever excess there may have been above a reasonable rate. When the Commission hears and determines a rate to be reasonable it is a just presumption and does no violence to assume that the rate fixed by the Commission is just and reasonable and to enforce it pending appeal until final decision. Either the shipper or the carrier must lose, and if the shipper loses before the decision by the Commission it is reasonable that after the decision, pending the appeal, the shipper should have the benefit of the presumption in favor of the decision of the Commission. The practical effect of this provision of the bill will be largely to nullify and destroy the power conferred upon the Commission. This seems to keep the promise to the ear and to break it to the hope.

I desire to call attention to another provision of the bill. Section 15 provides:

> That in all cases affected by this act where, under the laws heretofore in force an appeal or writ of error lay from the final order, judgment, or decree of any circuit court of the United States to the Supreme Court, an appeal or writ of error shall lie from the final order, judgment, or decree of the court of transportation to the Supreme Court, and that court only.

Section 5, chapter 517, Fifty-first Congress, second session, provides that appeals or writs of error may be taken from circuit courts direct to the Supreme Court in the following cases:

> In any case in which the jurisdiction of the court is an issue; in such cases the question alone of jurisdiction shall be certified to the Supreme Court from the court below for decision.
>
> From the final sentences and final decrees in prize causes.
>
> In cases of a capital or otherwise infamous crime.
>
> In any case that involves the construction or application of the Constitution of the United States.

In any case in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question.

In any case in which the constitution or laws of a State is claimed to be in contravention of the Constitution of the United States.

So that under the provisions made in section 15 of this bill for appeal the decision of the court of transportation is final. The only case that could be taken to the Supreme Court would be a case to test the constitutionality of this act of Congress, and if the Supreme Court decided the act constitutional that would be the end of appeal and the decisions of the court of transportation would be final. The decision of the court of transportation on all questions involving the construction of the law and all decisions of the court upon the validity of the decisions of the Commission and all orders and decrees of the court granting injunctions and restraining orders would be final, and there will be no way for the Commission or the public to have the Supreme Court pass upon these questions. Under the provisions of this bill the shipping public and the Commission are absolutely under the control of the court of transportation without opportunity of appeal or review by the Supreme Court, and every injunction and restraining order issued by the court of transportation is absolutely under its control without the possibility of review, revision, or reversal.

I doubt the wisdom and the propriety of vesting such absolute power in an inferior court, involving such vast and varied rights and tremendous interests, without the possibility of review by the Supreme Court. It will be observed that this court becomes thereby a law unto itself. Its decisions do not go into and become a part of the general decisions and law of the land. It is a court separated from all the other courts in our judicial system. It occurs to me, Mr. Chairman, that aside from the hazard of such legislation it is poor public policy to separate this litigation from our existing judicial system and destroy every opportunity to have it reviewed by the Supreme Court and made to conform to and be in harmony with the judicial opinion of the highest court in the land. Under sections 14 and 15 of the bill the Interstate Commerce Commission is under the absolute and unrestrained control of the court of transportation, and the court has it in its power, by the exercise of its injunction and restraining orders, absolutely to destroy and nullify the efficiency and usefulness of the Interstate Commerce Commission so far as practical results under this bill are concerned and without itself being subject to review.

Mr. Chairman, the bill is also faulty and defective because of its omissions. It will be noticed that the bill does not contain any provision to deal with or correct the flagrant evils growing out of the systems of private car lines and private terminal lines. I believe, sir, that I am justified in saying that the evils growing out of these two systems surpass in magnitude and iniquity the evils of rebates. In fact, the system of private car lines and private terminal lines have grown to such extent that they are to-day the prolific source of the great body of injustice to shippers and, I may add, not alone to the shippers but to the railways as well. The President has specified particularly these evils.

The Interstate Commerce Commission in its reports has from year to year called attention to the matter and emphasized the wrongs and injustice thereof, and yet in this bill we find no specific provision made to remedy these evils. Some friends of the bill, in their anxiety and solicitude for the bill, are bold enough to assert that this bill, taken in connection with existing law, will be adequate to reach these evils. Others, whose judgment and opinions are entitled to equally as much weight and consideration, assert the contrary. All are agreed that the wrongs and discriminating practices of these private car lines and private terminal companies are iniquitous and work great injury and injustice to the public and also to the railways, and I do not recall that in all this debate anyone has denied the grievous injustice of these private sidetrack and terminal companies. And yet, sir, in this state of affairs, why should the provisions of the bill be left doubtful and uncertain? Why can not the bill be made so plain and certain that when it becomes a law no doubt can arise as to its meaning? Is it left obscure for a purpose? Is there method in its uncertainty? Is not the aggregate wisdom and patriotism of this House sufficient to make the language of this bill clear, its purpose certain, and its provisions beyond cavil and dispute? I confess, sir, my utter inability to understand why it is, with these things plainly before us, those in control of the machinery of this House are unwilling to submit this measure to the judgment and the intelligence and patriotism of the membership of the House. I think that the distinguished Representative from West Virginia [Mr. GAINES] who addressed the House yesterday was justified in the chagrin and disappointment which he expressed at the action of the majority in adopting this rule. Other Members of the same political party have given expression to similar sentiments.

Mr. Chairman, I confess my inability to sympathize with these gentlemen in their distress and discomfiture when I remember that each of them, knowingly and purposely, voted for the adoption of the rule which absolutely prohibits amendment and forbids intelligent consideration of the bill. I am of opinion, Mr. Chairman, that a Member who voted for the adoption of the rule complains with poor grace of the iniquity of the rule, and offers a miserable excuse for his inability to gratify his desires for amending the bill. Let it be remembered that the Democrats, rising above partisan politics, by their votes placed their condemnation upon the rule and demanded that this great measure should be submitted to the judgment of the House upon its merits, and that the measure should receive the benefit of the individual and aggregate wisdom and patriotism of the membership of the House, so that the bill might be perfected to its highest efficiency; and that these great railway interests, being properly protected and safeguarded in all of their just rights, the American people, in their business and commercial enterprises, might be protected from wrong and injustice and discrimination on the part of the common carriers; and the fact that it is not so can not be laid as a charge against the Democratic party. [Loud applause.]

I now yield to the gentleman from Nevada.

[Mr. VAN DUZER addressed the committee. See Appendix.]

Mr. BARTLETT. Mr. Chairman, it must be recognized by everyone who has given this great subject even a casual investigation that no man who undertakes to discuss it will be able to call attention even to its salient features in the time allotted. But, Mr. Chairman, before proceeding to discuss this measure, I desire to say of it that it is a measure which ought, if enacted, to provide for the correction of the great evils to which the attention of the country has been called for years, but it fails effectively to do so. Since the decision of the Supreme Court of the United States in the case of The Railway Company *v.* Interstate Commerce Commission (162 U. S. Rep., 184) the Interstate Commerce Commission has been stripped of the power that had been recognized to be vested in that Commission up to that time—to declare an existing rate when challenged to be unjust and exorbitant and then to prescribe a just and reasonable rate—this being followed later by what is known as the "maximum rate case" (167 U. S. Rep., 479). The people are absolutely helpless and can not be protected from the exactions and discriminations of the great transportation companies of the country unless we pass some legislation giving the Interstate Commerce Commission larger and greater power than it has to-day.

This bill and the proposed substitute of the minority is the first and only opportunity which this House has had or will have to vote to correct these wrongs of which our constituents have so long, so continually, and so justly complained.

In my judgment the bill which is presented by the majority, while in a measure meeting the demand of the people for relief, at the same time contains provisions and sections which will ultimately absolutely destroy any prompt relief which is sought to be given to the people by the bill.

The great question before the American people is not whether we shall have more Federal courts, for of these we have a superabundance; not whether we shall have special courts for the adjudication of questions arising between the transportation companies, the shippers, and the people, but whether the sovereign the United States Government, through its legislative branch and power, shall do that which it has been recognized it has the right under the Constitution to do, viz, fix and regulate charges for transportation over the great highways of the nation. Even England has, many years ago, determined that a railway corporation or any transportation company engaged in carrying passengers and freight, by reason of the charter powers granted by the sovereign, by reason of the right to condemn for its use private property, by reason of the right which the sovereign has and the sovereign alone has to charge for tolls and transportation upon the great highways, is subject to the control and regulation by the Government. The power to fix and demand of the people tolls and charges is a sovereign power, and when that has been delegated to the corporation engaged in this business that corporation becomes subject to the control of the legislative body. That can not now be disputed, for it is a fixed principle of law, recognized by the courts everywhere, first adjudicated in England years ago, and later by the State courts and by our own Supreme Court in a number of cases.

This right of the Government to exercise its sovereign power in the matter of controlling and regulating railroads and their rates has been upheld by the Supreme Court of the United

States in many decisions, but in the cases which I now cite the doctrine is so clearly defined that I call attention to them:

In the case of Olcott *v.* Supervisors (16 Wall., 694–695), Judge Strong thus declares what the doctrine is as to the right of the sovereign to regulate and control railroads:

The railroad can, therefore, be controlled and regulated by the State. Its use can be defined; its tolls and rates for transportation may be limited. Is a work made by authority of the State, subject thus to its regulation, and having for its object an increase of public convenience, to be regarded as ordinary private property? That railroads, though constructed by private corporations and owned by them, are public highways has been the doctrine of nearly all the courts ever since such conveniences for passage and transportation have had any existence. Very early the question arose whether a State's right of eminent domain could be exercised by a private corporation created for the purpose of constructing a railroad. Clearly it could not, unless taking for such a purpose by such an agency is taking land for public use. The right of eminent domain nowhere justifies the taking of property for a private use.

Yet it is a doctrine universally accepted that a State legislature may authorize a private corporation to take land for the construction of such a road, making compensation to the owner. What else does this doctrine mean if not that building a railroad, though it be built by a private corporation, is an act done for a public use? And the reason why the use has always been held a public one is that such a road is a highway, whether made by the Government itself or by the agency of corporate bodies, or even by individuals when they obtain their power to construct it from legislative grant.

It would be useless to cite the numerous decisions to this effect which have been made in the State courts. We may, however, refer to two or three, which exhibit fully, not only the doctrine, but the reasons upon which it rests: * * *

Whether the use of a railroad is a public or private one depends in no measure upon the question of who constructed or who owns it. It has never been considered a matter of importance that the road was built by the agency of a private corporation. No matter who is the agent, the function performed is that of the State. Though the ownership is private, the use is public. So, turnpikes, bridges, ferries, and canals, although made by individuals under public grants or by companies, are regarded as publici juris. The right to exact tolls or charge freight is granted for a service to the public. The owners may be private companies, but they are compellable to permit the public to use their works in the manner in which such works can be used. That all persons may not put their own cars upon the road and use their own motive power has no bearing upon the question whether the road is a public highway. It bears only upon the mode of use, of which the legislature is the exclusive judge.

In the case of Lake Shore and Michigan Southern Railway *v.* Ohio (173 U. S. Repts., 301–302), the court says:

"The question is no longer an open one," said the United States Supreme Court in Cherokee Nation *v.* Southern Kansas Railway (135 U. S. Repts., 641), "as to whether a railroad is a public highway, established primarily for the convenience of the people, and therefore subject to governmental control and regulation. It is because it is a public highway, and subject to such control, that the corporation by which it is constructed and by which it is to be maintained may be permitted, under legislative sanction, to appropriate private property for the purpose of a right of way upon making just compensation to the owner in the manner prescribed by law." In the construction of such a highway, under public sanction, the corporation really performs a function of the State.

In brief, the present rule of law may be stated as follows:

When the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must to the extent of that interest submit to be controlled by the public for the common good as long as he maintains the use. The obligations of public callings are found to be fourfold—to serve all, with adequate facilities, for a reasonable compensation and without discrimination; the right of a public service company to carry on its business in its own way; to make regulations for the use of its property by the public, and to modify its undertaking by contract with individuals has also been limited. And courts and legislatures have in the case of many industries actually gone so far as to say what prices should be and how the services should be conducted.

Mr. Chairman, that Congress has the right to regulate and control the operation of railways engaged in interstate traffic, and to exercise its sovereign power so as to prescribe and fix reasonable rates for transportation over the lines of such railways, is no longer a mooted or disputed question. It is true that when it was first asserted that the sovereign had this power the railroads disputed it, asserting that they were private corporations, and fought out before the courts, both State and Federal, with the States and the National Government, the right of the sovereign to so control and regulate traffic on the railroads. But, following the decisions of the English courts on the same subject, the American courts have from the first sustained the right and power of the sovereign to regulate and control the railroads and fix their charges for transportation, until now it is the accepted doctrine, the only limitation upon this power being that the rates fixed must be reasonable and must not amount to confiscation.

Mr. Chairman, the battle for the right of the sovereign, whether it be the national or the individual State governments, in their respective spheres, to regulate and control these great public highways and the transportation rates that are to be paid them by the people, having been won in the courts until the railroads themselves have been forced to admit that right, the question has been continually arising during the past twenty years as to how, in what manner, and to what extent this sovereign right and power shall be exercised. The exercise of this power is a legislative act, and one that the legislative branch of the Government must exercise itself, or by properly constituted agencies or departments of the Government. The various States of the Union have undertaken and succeeded in establishing through their legislature the right to control and regulate railroad transportation within the limits of the several States, and the National Government, in 1887, urged on by the demands of the people to correct the then existing abuses, undertook by the establishment of the Interstate Commerce Commission, and by giving it the powers defined in the act of March 4, 1887, and the acts amendatory thereof, to correct the abuses, discriminations, and extortions practiced by the railroads engaged in interstate commerce. I do not contend that by that act the Commission was primarily made a rate-making body—that is, it was not given the power to readjust, fix, or change railroad rates as they then existed, or as they might thereafter be fixed by the railroads. The carrier was left free to arrange its own tariffs in the first instance, but I believe that it was the intention of Congress, when it enacted that law, to enable the Interstate Commerce Commission to sit for the correction of what was unreasonable and unjust in the rates, on complaint made to it by the shipper, and that the Commission should have the right to determine what was a reasonable rate, and that this determination or judgment of the Commission should be enforced in the courts, if necessary. The Commission never, in fact, claimed the right to fix a rate in the first instance.

In one of its earliest cases, that of Thatcher *v.* The Delaware and Hudson Canal Company (1 I. C. C. Rep., 152–156), the Commission decided—speaking of its relations to the making of rates—as follows:

Its power in respect to rates is to determine whether those which the railroads impose are for any reason in conflict with the statute.

Again, in a case before the Commission of the Cincinnati Freight Bureau *v.* Cincinnati, New Orleans and Texas Pacific Railway Company (7 I. C. C. Rep., 191), the Commission decided as follows:

This Commission is not primarily a rate-making body. The carrier is left free to arrange its own tariffs in the first instance. We sit for the correction of what is unreasonable and unjust in these tariffs.

About the time this decision was rendered the Supreme Court of the United States decided that the Commission had no right to fix the rate in any instance, although the Commission had up to that time proceeded upon the theory that under the act of 1887 it was its duty, and it had the power, to determine whether the rate complained of was just and reasonable and, if found to be unjust and unreasonable, to correct that violation of the statute, and in doing so the Commission assumed that the only way to accomplish this was to prohibit the charging of the unreasonable rate and compel the charging of one that was reasonable. Up to the time of this decision of the Supreme Court of the United States the Commission had proceeded upon that theory, and of the 135 cases which were had before it, it prescribed a change of rate for the future in 68 of these cases.

The Supreme Court of the United States, in the case of the Interstate Commerce Commission *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company—known as the "maximum-rate case"—reported in the 167 United States Reports, page 479, held that the Interstate Commerce Commission had no power to prescribe a rate for the future, but that its power was confined to determining whether the rate complained of was reasonable or unreasonable in the past.

Thus it becomes necessary, in order to give relief in the cases which may come before the Commission, to prescribe a new method and way of fixing reasonable rates and changing unreasonable rates to reasonable rates. There is no question that Congress has the right, either through itself or through the Interstate Commerce Commission, to compel the carrier, when the rate is found to be unreasonable, to change it so as to make it reasonable and just. There is no question that in many instances the rates of the railroads for transportation and their practices are unreasonable and unjust to the shipper and the public. No one can gainsay that the people of this country demand relief from the abuses—because they are abuses—existing on the part of transportation companies. From all sections of the United States come up appeals to Congress to enact some law that will correct these evils and abuses, and the consideration of this bill is the result of that demand of the people. The importance of this question should be borne in mind; it can not well be overestimated. It is said that $12,000,000,000 are invested in railroad properties; millions of passengers, as well as millions of tons of freight, are moved each year by the railroad

companies, and this business is carried on and conducted by a multitude of corporations, working in different parts of the country and subjected to varying and diverse conditions. Great as the importance of this question is to the railroads, when we consider the amount of property involved and the amount of business done, it is well to remember at the same time that it is of greater importance to the public and the people.

The slightest change in rates upon any of the staple commodities transported by the railroads amounts to an enormous sum in the aggregate. The freight charges on the most staple articles used daily by the people are large, and often constitute the larger part of the cost to the consumer. The rate of freight fixes the prices of the products of the farm, whether it be the corn and wheat of the West or the cotton and fruit of the South. By the rates which are established, the traffic manager of the railroad may determine whether any industry shall exist, or whether a particular locality shall flourish. So that this question touches not only the billions of dollars invested in railroad properties, but upon its proper solution depends the prosperity and welfare of the people at large throughout the entire Union.

Since, therefore, railroads are the public highways of the country, the very arteries of commerce, through which the lifeblood of the people for business and prosperity flows, and since the Government has the right to prescribe and fix the rates for such transportation, limited only in such exercise by the constitutional prohibition that such rate shall not confiscate the property of the railroad, and I believe that the bill presented by the minority, which proposes to grant this legislative right and privilege, as well as duty, to the Interstate Commerce Commission, to fix the rate on complaint made, when that rate shall have been found to be unreasonable and unjust, and to have that rate to remain in force and effect until the judicial tribunals of the country, now established, and to which all the citizens alike can appeal, shall determine otherwise, meets the demands made by the people to Congress to correct the existing evils in the matter of transportation rates; and I prefer this measure vastly to the bill presented by the majority of the committee, which, while it grants this power to the Commission, at the same time establishes a special court for the determination of disputed questions after a hearing has been had before the Commission, and further permits more delay by providing for appeals from the decisions of the Interstate Commerce Commission, not only to this special court, but to the Supreme Court of the United States upon all the questions involved.

Whether this bill has thus provided an appeal to the Supreme Court of the United States upon any other than a constitutional question I will discuss later on.

Being presented with the two propositions, the majority bill and the minority bill, and by the rule under which this subject is being considered, forced upon the House by the will of a partisan majority, I shall vote first for the minority substitute, because it does that which I think ought to be done; it gives the Commission the right to hear and determine, on complaint made, whether the rate is just or unjust, reasonable or unreasonable, and fixes that rate for the future and permits it to remain so fixed until determined to be unreasonable and unjust by the courts of the country; because it does not provide, as the majority bill does, for unending appeals from the decisions of the Commission and from the decisions of the transportation court, but requires the rate so fixed to be the rate until set aside in a judicial proceeding for that purpose. Knowing that this minority substitute will be voted down, I shall vote for the majority bill, not because I favor it in any of its provisions, except that which grants to the Interstate Commerce Commission the power to fix a rate when it is found to be unreasonable, but because I believe that in another branch of Congress, where freedom of debate and amendment are permitted, if the bill is passed at all, which I seriously doubt, at this session of Congress, there will be given an opportunity for those who advocate and support the demands of the people in relation to this matter to perfect it.

There is nothing new in the main propositions contained in this bill or in the substitute. No Member of this Congress, and no Member in recent years, has the right to claim for himself the distinction of being the originator or author of the propositions that are contained in these bills, so far as they seek to regulate or fix railroad rates for transportation. The Industrial Commission, appointed by Congress, after being in session for four years, and after having exhaustive hearings and investigations, in February, 1902, made a report to Congress, and in that report recommended, among other things, as follows:

> The definite grant of power to the Interstate Commerce Commission, never on its own initiative, but only on formal complaint, to pass upon the reasonableness of freight and passenger rates or charges; also the definite grant of power to declare given rates unreasonable, as at present, together with power to prescribe reasonable rates in substitution.

In its annual report of December 6, 1897, the Interstate Commerce Commission, of which that distinguished Democrat, William R. Morrison, was chairman, said that, subject to the right of review, the orders of the Commission should be conclusive and effective; that this right of review should be exercised within a time limited, or not at all, and pending the review the decision of the Commission should remain in force.

The petitions from the people, boards of trade, bodies of business men, and shippers complain of the excessive rates, and have made the same demand for years. It is not a new question at all. The only new questions involved are the novel and strange features contained in the majority bill, which provide for a court of transportation, and the cumbersome machinery of that court and the provisions for appeals, which mean continuous delay. Of the majority bill it may well be said:

What in it is good is not new.

What in it is new is not good.

It being settled law that the Congress has the power to not only regulate, but to fix the charges of transportation companies engaged in interstate commerce, that is a sovereign right belonging to this Republic. Not only that, but it has been decided by the Supreme Court, time and time again, that that is a legislative power, a legislative act; and while Congress may do that act, it can in addition delegate that power to a subordinate branch of the Government, and when it has once given that power to a subordinate branch of the Government or the head of a Department the judgment and decision of that subordinate branch, when rendered, is final and conclusive unless it violates some constitutional provision of our fundamental law. I beg to call the attention of the House to the most recent decision upon that subject, made by the Supreme Court of the United States on the 10th of March, 1904, in the famous case of Bates & Guild Company *v.* Payne, for the purpose of demonstrating to the House and putting before the country that this immense complicated machinery of a transportation court, with which the bill of the majority is clogged, is unnecessary, except in the interests of the corporations and in the interest of continued delay in the adjudication of the rights of the people to be freed from the exactions and extortions of the transportation companies. It is not necessary, because the Supreme Court has recognized, time and time again, and in the late decision, to which I shall call attention, the power and right of Congress to delegate to a subordinate branch of the Government—the head of a Department—the right to perform a legislative act, and that that act when done becomes conclusive on the law and the facts unless it contravenes, as I stated, some fundamental law of the land. The decision to which I call attention is as follows:

> Where the decision of questions of fact is committed by Congress to the judgment and discretion of the head of a Department, his decision thereon is conclusive; and even upon mixed questions of law and fact or of law alone, his action will carry with it a strong presumption of its correctness, and the courts will not ordinarily review it, although they have the power, and will occasionally exercise the right of so doing. (Bates & Guild Company *v.* Payne, 194 U. S. Rep., 106.)

This is the most recent decision of our Supreme Court, and I here, in the interest and behalf of the people, invoke the principle there declared and upheld, and insist that we shall commit to the Interstate Commerce Commission the power and right to decide the questions of fact whether the rates for transportation, when challenged in a given case, are unjust or unreasonable, and when found to be unjust, to declare and adjudge what is reasonable and just, and that that decision shall be conclusive until set aside in the proper judicial tribunal.

Here we have the latest enunciation of the Supreme Court of the United States upon the power, the duty and the course pursued by these courts when reviewing or undertaking to review a decision of a subordinate branch to the Government in carrying out the legislative will. It is true, I understand, and every other lawyer in this House understands, no act we can pass, no measure we may enact can take away the right of the corporation, companies, or citizens as guaranteed to them by the Constitution of the United States that property shall not be taken without due process of law or without just compensation for the public use; therefore, Mr. Chairman, the chief objection which I have to this bill of the majority is its cumbrous machinery providing for the transportation court, which will clog the wheels of this great triumphant march of progress and reform to redress the wrongs of the people against which they now cry out.

There is no necessity for it, except, I repeat, to aid those who now violate the law—those who will continue to carry on, even when this bill shall become a law, these unjust and extravagant exactions and extortions on the people, against which complaints

are so numerous and for the correction of which the demands are so urgent. The only effect of these provisions will be to aid further in defeating the relief asked for. Therefore, Mr. Chairman, I am opposed to those sections which establish the transportation court and provide every means and every facility necessary for delaying and defeating the judgment and decision of the Commission.

Under the provisions of the bill presented by the majority the days would become weeks, and the weeks and months lengthen into years, through which a shipper or citizen, aggrieved by the exactions of the transportation corporations, would be delayed before he could secure redress. There is nothing like it, Mr. Chairman, in the judicial history of this country; and if this bill becomes law, and shall continue as the law for any number of years as the only means for the relief of the shippers, this transportation court will find its counterpart in that great impediment of justice known formerly as the "chancery courts of England." They have been ably and graphically described by the great novelist of England, Charles Dickens. We have all read his description of them in the celebrated novel, Bleak House. We have his words here in which he describes the conditions in England of people who went struggling through the mazes of the chancery court. Here to-day, in this twentieth century, it is proposed to establish what has been long since abolished in England in pursuance to the demands for reform and progress in the determination of suits in equity. I repeat we have here ingrafted upon this bill another repetition of the courts of chancery in England. Said Mr. Dickens, in describing these conditions:

> This is the court of chancery; which has its decaying houses and its blighted lands in every shire; which has its worn-out lunatic in every madhouse and its dead in every churchyard; which has its ruined suitor, with his slipshod heels and threadbare dress, borrowing and begging through the round of every man's acquaintance; which gives to moneyed might the means abundantly of wearying out the right; which so exhausts finances, patience, courage, hope; so overthrows the brain and breaks the heart that there is not an honorable man among its practitioners who would not give—who does not often give—the warning: "Suffer any wrong that can be done you rather than come here."

That is the story of the English chancery court. Is it to be restored here in the twentieth century in an enactment of this bill into law, when we add to it the transportation-court clause as provided in the bill of the majority? Doubtless the railroads and their trained and skilled lawyers find much consolation in the fact that if any legislation on this subject is to be had, they are to have these special courts. These provisions for a transportation court meet with hearty approval of the railroad officials. While they resist the granting the Commission the right to fix rates, they uniformly agree that the court should be established.

Mr. Samuel Spencer, who appeared before the House Committee on Interstate and Foreign Commerce as the representative of the Southern Railway and other railroad companies, and at their instance made to that committee the following statement, which he proposed as the proper legislation on the subject of railroad-rate legislation. (See Hearing, p. 118.)

> Now, I am going to very briefly make a few suggestions.
> (1) Form an interstate-commerce court, or so increase the number of judges of the existing court that a special interstate-commerce court can be formed from their number, which shall have special jurisdiction over all cases arising under the interstate-commerce act and its amendments; this court to pass upon all rates adjudged by the Commission on complaint and hearing to be unreasonable before the rate shall take effect, there being no appeal from the decision of this court to the Supreme Court, except upon questions of law, and no stay during such appeal.
> (2) Bring the private car lines, fast freight lines, and the water lines doing a through interstate traffic within the jurisdiction of the interstate-commerce act.
> (3) Relieve the carriers of the existing prohibition against making reasonable agreements among themselves for the purpose of maintaining lawful rates, the agreements and the rates to be subject to the previous approval of the Interstate Commerce Commission.
> (4) Enforce the existing laws, not only as a matter of administration of law and justice, but as the most effective means of eliminating the number of complaints.
> I want to reiterate that we are not here asking that there shall be no legislation. If in the wisdom of Congress it is thought proper, I suggest that it should take this line: Form an interstate-commerce court, or probably better still, give special functions to special sittings of the circuit courts of the United States. Give to the Commission the right to name the rate or suggest the rate, subject to appeal to the courts. That will leave the question where it is if the railroads acquiesce, and they have acquiesced in nearly 90 per cent of all the cases. Now, if they do not acquiesce and take it to the courts, let the rate remain in effect, and the railroad company give bond until the court—I mean the circuit court alone, this interstate-commerce court, either a special court or made up from judges of the other circuit courts sitting here or anywhere else—decides that the rates shall go into effect. Then it goes into effect, and there is no suspension after that in appealing to the Supreme Court on questions of law. Begin at the circuit court, stop the appeal at the circuit court, except in cases of law going to the Supreme Court, and that appeal on a law point to the Supreme Court not to stay the proceedings.

But the suggestions of Mr. Spencer do not meet the necessities and demand of the hour. They will not correct the evils which should be corrected.

The evils have been the exaction of excessive demands for this service by the transportation companies, discriminations and excessive rates between different points in the same locality, and, of recent years, excessive charges made by special car line companies and terminal companies, which are operated by the railroads for the benefit of such special car line companies.

Since the decision of the Supreme Court of the United States, first, in the case of the New Orleans and Texas Pacific Railway *v.* The Interstate Commerce Commission, reported in 162 United States Reports, page 184, where the Court virtually held that the Interstate Commerce Commission is not empowered, either expressly or by implication, to fix rates in advance, the question of rates over lines and transportation companies engaged in interstate commerce has grown to be of such vital importance that the demand has become almost universal for the correction of the evil by the legislative power of the Government, which is lodged in Congress alone, or in some agent of Congress appointed for that purpose.

While it is true that the Interstate Commerce Commission, under the act of 1887, was not primarily a rate-making body, and the carrier was left free to arrange its own tariffs in the first instance, still, up to the time of these decisions it was always believed that the Interstate Commerce Commission had that power, and that it had the right to sit for the correction of what was unreasonable and unjust in these railroad tariffs.

The Committee on Interstate and Foreign Commerce of this House has for some time past been considering various bills referred to in the report from that committee looking to a remedy for those evils. The railroads themselves recently, judging from the statements made by some of their presidents and managers and others representing them before this committee, recognize these evils and agree that they should be corrected. From the first attempt ever made to enact legislation with reference to railway rates, either by the States or by the Congress, the railways have always resisted the proposition that they were public highways until they were forced to accept that position by repeated rulings of the Supreme Court of the United States. It may now be accepted as undisputed that railroads, whether built by the money of private individuals or corporations, are public highways, built chiefly for the benefit of the public, exercising the governmental right and privilege of condemning the property of the citizen for its use, and, by reason of that power granted it by the sovereign, to levy toll and exactions from the people. It being thus the acknowledged right of the Government to regulate or fix, through its legislative branch, the rates at which freight and passengers shall be carried, there is no question raised or can be raised as to the right of Congress, in a legal manner, to fix rates for the carriage of freight and passengers on the railroads doing an interstate business. The question that should be uppermost in the mind of the legislator is, How can this be done for the best interests of the people and with least injury to the railroads, the prime object being to secure to the people reasonable and just rates and to relieve them from excessive charges or extortions in rates which are too high or unreasonable or which give preferences to preferred shippers or patrons of the road or to localities?

No one familiar with the decisions of the courts, and especially the decisions of the Supreme Court of the United States, which I have referred to, will dispute the proposition that the fixing of rates is a legislative act, and that it must be done by the legislative branch of the Government, and not by the judicial branch. Whenever we undertake to confer upon the courts—whether those that now exist, or any that may be created—the right to fix rates, to reduce them, to raise them, or to change them in any particular, we do a useless thing, and one that must fail. Hence, in the desire to accomplish the result so universally demanded by the people, I am of the opinion that Congress will have done all that it can legally do when it shall either fix the rates themselves, or when it shall confer that right and duty and power upon some agent of the Congress, to whom it shall delegate this legislative duty and power, and when Congress shall have delegated this power to a legislative body, such as the Interstate Commerce Commission, the act of such a Commission, in the exercise of this legislaitve power thus delegated, should be as final as any other legislative act, and an appeal to the courts should only be had to test that legislative act like any other legislative act of Congress—that is, to test its legality or constitutionality. Hence I am opposed to the establishment of another court, called in this bill the

"transportation court," for the reason that I do not believe that Congress has the right to create a judicial body and confer upon it legislative authority. I do not believe in special courts for special litigants, but that the courts should be open to everyone alike.

When the Congress has provided, as it has the authority to do, for the fixing of rates by this legislative act, through a proper constitutional legislative method, then that act, in so fixing the rates, ought to be final and remain in force just as any other legislative enactment, until overturned by a regular judicial tribunal because it violates some provision of our Constitution. For this reason I do not believe that this court should be established to which an appeal from the decisions of the Interstate Commerce Commission can be had. Even though I should be mistaken in my view of the law as to the right of Congress to establish a judicial tribunal for the purpose of acting as a legislative body and determining and fixing freight and passenger rates, or changing those fixed by the Commission, I do not feel disposed to support the bill which provides for this court, because, in my judgment, it but adds to the delay and hindrance of carrying out the requirements which it is admitted are needed at the present time. To justify my assertion that it will create delay, the first section of this bill provides that at any time within sixty days from the date of the order of the Commission fixing the rates, the person affected thereby shall have the right to institute proceedings in this court of transportation; and it is to be observed that this court is not only to be established as a court, but as a court of equity, and the judges who are to preside in it are made a part of the judicial system of the United States. Therefore there can be no question that it is a judicial tribunal, endowed with all the powers of the judiciary, and that it is in no sense a legislative body, though it is given the power to exercise purely legislative functions when it undertakes to fix rates; because the very first section provides that those who make appeal to this court have the right to have the lawfulness, justice, and reasonableness of the rate fixed by the Commission inquired into and determined, provided this appeal to the court is made within sixty days.

More than this, this court is given regular terms in the eighth section of the bill, which provides that they are to sit the first Tuesdays in March, June, September, and December, at which terms, as a matter of course, the business of the court is to be transacted. This court is to sit in Washington, but may hold special sessions at other places when justice would be promoted thereby. While it is true that the fourteenth section of the bill provides that the court as a court of equity shall always be open for certain purposes therein stated, such as the granting of interlocutory orders, motions, temporary restraining orders, etc., the trial of these orders, according to this bill, must take place in term time. They have not even the power to hear an interlocutory injunction except in term time, as the circuit judges now have. After the decision has been made and within sixty days an appeal has been filed, then, under this bill, a trial can only be had and a decision rendered at a regular term of the court, as is true under the law now provided for trials in the existing courts, and when a trial is ended in this transportation court then another appeal can be had.

Section 15 provides for an appeal to the Supreme Court of the United States, on appeal or by writ of error, under the laws as they now exist providing for appeals from the final judgments and decrees of the circuit courts of the United States to the Supreme Court of the United States, and these must be taken within sixty days. So that after the Interstate Commerce Commission has had the witnesses before it—has heard the case and rendered its judgment—the person not satisfied with that judgment has sixty days within which to appeal to this transportation court, and that appeal must be made either to the March, June, September, or December term of the court, and as there is no provision made in this bill for the trial of this case at the first term of this court it is to be presumed that the law now in force is to regulate the practice in this court, and that the term to which the appeal is filed is to be the appearance term; so that in all probability, in addition to the sixty days in which the aggrieved party may appeal, there is necessarily ninety days more to be added to the time before a hearing can possibly be had. After the hearing is had the provision contained in section 15 for an appeal to the Supreme Court of the United States would enable the dissatisfied party to make such appeal within sixty days after the final order and judgment of the transportation court; and then it must be made to the Supreme Court either at its April or October term, and if that court is not in session it must await the regular term, even though it should give preference to the case when the regular term commences. So that if an appeal should be taken by a railroad, instead of clearing the way for a speedy and prompt decision, we are but adding to the means of delay by permitting the railroads to drag the Commission and the complainant through the various meshes of this new judicial system in order to obtain that which Congress should give him in the first instance—that is, a reasonable rate for the carriage of his freight. But if this action does give the right to appeal in all cases, then the decision will be superseded when the appeal is entered or the writ of error granted.

Under the act of October 18, 1875, it is provided that in any case where a writ of error may be a supersedeas the appellant may obtain such supersedeas by serving the writ of error—by leaving a copy thereof for the adverse party in the clerk's office where the record remains—within sixty days, exclusive of Sundays, after the rendition of the judgment complained of and giving the security required by law on the issuing of the citation.

Under the original judiciary act, and by various amendments adopted since, the law on the subject of obtaining supersedeas is as follows:

> Every judge or justice signing a citation on any writ of error, except in cases brought by the United States or by direction of any Department of the Government, shall take good and sufficient security that the plaintiff in error or the appellant shall prosecute his writ or appeal to effect, and if he fails to make his plea good shall answer all damages and costs where the writ is a supersedeas and stays execution, or all costs only where it is not a supersedeas as aforesaid.

The act further provides that the judge granting the writ of error or appeal may grant the supersedeas, and in equity cases the judge has the power to pass an order granting the supersedeas on such terms as he may direct.

This being the law, it must be evident that when the railroad or transportation company is not satisfied with the decision of the Interstate Commerce Commission it can appeal to the transportation court and stay the proceedings by temporary restraining orders and interlocutory injunctions, and from the decision of this court appeal to the Supreme Court of the United States, and pending the appeal the judgment is superseded.

But that is not the only criticism I have to make upon section 15. It is very questionable whether anyone—the railroad, the Commission, or the shipper—would be able to appeal to the Supreme Court of the United States at all from the decision of the transportation court, except upon a question involving the constitutionality of this law or the constitutionality of the decision of the Interstate Commerce Commission or of the transportation court. As the law now stands, and this section simply provides for an appeal under the law as it now exists, an appeal can only be taken directly to the Supreme Court of the United States from any of the circuit courts of the United States in the following cases:

Under the act of March 3, 1891, appeals can be had from the circuit court of the United States to the Supreme Court of the United States only in the following cases:

> (1) In any case in which the jurisdiction of the court is in issue, in which case the question of jurisdiction alone shall be certified for decision.
> (2) From the final sentences and decrees in prize cases.
> (3) In cases of conviction of capital or otherwise infamous crime.
> (4) In any case that involves the construction or application of the Constitution of the United States.
> (5) In any case in which the constitutionality of any law of the United States or validity of any treaty made under its authority is drawn in question.
> (6) In any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

Therefore, if it was the purpose of the framer of this bill to give to those who may feel aggrieved at the decision of the Interstate Commerce Commission and then of the court of transportation the right to appeal directly to the Supreme Court of the United States, they can only do so, under the law which we propose to enact, in cases where the act of the Commission in carrying out the law or the final judgment and decree of the transportation court are alleged to be in violation of the Constitution of the United States. If the rate fixed was not so low as to be confiscatory, then the railroad could in no case appeal to the Supreme Court of the United States, except to test the constitutionality of the law to be enacted, and I do not see how the Commission or the shipper could in any case appeal to the Supreme Court of the United States. If these premises are correct, then it is true that the decision of the transportation court would be final upon the facts of the case, if, in making that decision upon the facts, they do not violate the Constitution of the United States.

If it was the purpose of the framers of this section to give to any one the right to appeal to the Supreme Court of the United States on the whole case, then that purpose can not be carried out as it was intended, and if that be the purpose, then this court and this provision for an appeal are absolutely useless, because under that provision the railroads or carriers have

all the facilities and power to appeal to the circuit courts of the United States, and from them to the Supreme Court of the United States, in order to test the constitutionality of this law or any order or act of the Commission fixing a rate.

This bill, with these provisions, will not bring that speedy and prompt relief which the people demand, nor will this section 15, providing for an appeal to the Supreme Court of the United States, be of any avail to the railroads or the Commission, if they should desire to make this appeal, and so it will be realized in the end by the railroads, the Commission, and the shipper that this provision is but a delusion, and, like the "Dead Sea fruit," will "turn to ashes on the lips." So far as the people are concerned, it is but keeping the promise to the ear and breaking it to the hope; so far as the railroads are concerned, it is but pretending to give them an additional right to appeal to the Supreme Court of the United States, when, in fact, it does not, but will deny to them and prevent them from appealing in any case or for any cause, except that which they now have under the law by the trial of their cases in the ordinary established courts of the country.

I would not deny the right of the railroads to contest the validity of this law, or the validity of any order of the Interstate Commerce Commission fixing a rate; I could not deny that to them if I desired to; the courts of the United States are always open to any litigants who desire to test the constitutionality of a law of Congress or of the States when it fixes their rates unjustly. My point against the bill is that it does not add any advantage or give any right to the railroads to appeal in addition to those they now have.

The English Parliament has long since established what is known as the "English railway commission," which exercises the power of fixing rates, and a provision is made for an appeal to the courts, though an appeal in England can only be taken upon questions of law; there is no appeal upon questions of fact, but the decision of the railway commission in England as to all questions of fact is final, and it should be final here, and the railroads should be compelled to comply with it unless they can assert and maintain in the courts that such order of the Commission violates their rights under the Constitution of the United States, and to enable them to make such a contention no additional court is necessary to be established.

The bill presented by the minority carries out completely the recommendations that the Interstate Commerce Commission has made since 1897, following the decision referred to, when the Supreme Court of the United States decided that they did not have the power to make a rate or fix a rate. No one is entitled to claim this proposition as his, or to set up the childish assertion that he found it first. The various States in the Union many years ago asserted and exercised the power to fix transportation rates within their borders. The State of Georgia proceeded to do this as early as 1879, and the other States some of them before this and many of them since. The whole truth of it is that the railroads, when the State legislatures or Congress have undertaken to exercise this sovereign right, have with all their power and with all their means undertaken to thwart it and destroy it. Whether the restraining hand of the legislatures or Congress has been lifted or kept away they have continued their abuses until now if Congress shall go to the extreme of doing that which seems must be done in order to do justice to the people of this country—that is, to fix rates—they have no one to blame for it but themselves.

In the political contests of the country in recent years the representatives of the railroads of the country have been found on the side of the Republicans, lending all their aid and influence to prevent reforms in the interest of the people or legislation for the benefit of the people. By special privileges, special rates and rebates, and combinations, they have more than any other agency in the country enabled the great giant trusts and combinations to exist and to prosper at the expense of the people, until it is admitted that the greatest factor in enabling trusts to prey upon the people is the special benefits they obtain from the railroads in transportation; and they have always been found lending their money and their votes against that party which sought to remedy these evils effectually. Now that they have secured through their aid, through their campaign contributions, and their influence upon the voters the election of a Republican President and a Republican Congress, it seems but retributive justice that that President should awaken to a realization of the dangers that threaten the people of this country and demand legislation that will stay their rapacity and exactions upon the people.

Mr. Chairman, the exercise by Congress of the sovereign power vested in it by the Constitution of the United States to regulate and control these great transportation companies engaged in interstate business is one clearly granted by that instrument. It is in no sense a new proposition, and does not in the least approach the doctrine of government ownership of railroads. The socialist who would destroy the Constitution and convert the Government of the United States from one whose powers and duties are limited by the Constitution to one whose power to legislate shall be unlimited, either as to subject-matter or persons, can find no encouragement from the fact that this Congress shall enact laws of the character proposed in this bill. As a Democrat, believing in the perpetuation of our Government under the Constitution, as it was established for us by the fathers of the Constitution, I favor this legislation which proposes to extend to the Interstate Commerce Commission the authority to do that which Congress has the power to do—to regulate or fix rates in a proper case. But I do not now, nor will I ever, be found advocating or supporting that dangerous, un-American, and socialistic doctrine of government ownership of the interstate railways. No such necessity as that will ever be presented to us, if Congress shall properly exercise its constitutional authority to compel these corporations to comply with reasonable and just regulations as to freight rates, and to abandon and discontinue discriminations, rebates, and other vicious practices, by which they extort from the people extravagant and unreasonable charges for the service rendered by these corporations to the public. Great as are these evils at the present, for myself I would more readily submit to them for a while than seek relief in the socialistic proposition for relief, by government ownership, nor do I believe that the sober-thinking, liberty-loving, conservative people of this Republic will ever consent to embark in an undertaking so foreign to every theory and principle of our Government. Whatever other political parties may indorse, I feel confident that the Democratic party, to which I belong, and whose principles I cherish, will never support such a proposition so at war with every article of its faith.

There is one section of this Republic whose Democracy has always remained true in every hour of that party's trial, and which in the last national election was the only "oasis" in the great "Sahara" of defeat, the section from which I have the honor to come, and to represent in part in this House—the South—which will set its face as adamant, unmoved and unchangeable, against the proposition of those who would transform our Government from the ideal Government and Republic it is to one of socialism and paternalism, the first step toward which will be Government ownership of railroads.

Mr. Chairman, we have heard it stated in this House by gentlemen on this side and elsewhere that in order to win success the Democratic party must advance and become radical; that it must abandon the principles of constitutional government and take positions favoring Government ownership of railroads and other extreme measures. Speaking for my own people—and I believe I voice the sentiments of the vast majority of the people of the South—I say to the people of this great Republic that when the time comes in any contest between extreme radicalism, socialism, or other destructive forces that may be organized to overthrow and destroy the great principles of government on which this Republic of ours is founded, you will find one section of this great Republic where there is more conservatism, more pure, unadulterated Americanism, more love for the Constitution and the principles of our Government there contained than in other parts of the Union. You will find the people of the South ready to unite with the conservative people of the other States, standing firmly with them and in the forefront with those Americans who shall contend for the preservation to this people and those of future generations, of the Constitution and the principles of a constitutional, republican form of government as it was established for and bequeathed to us by our fathers. [Applause.]

The CHAIRMAN. The time of the gentleman from Georgia [Mr. BARTLETT] has expired.

APPENDIX.

[Extract from the message of the President, December 6, 1904.]

REBATES.

Above all else, we must strive to keep the highways of commerce open to all on equal terms; and to do this it is necessary to put a complete stop to all rebates. Whether the shipper or the railroad is to blame makes no difference; the rebate must be stopped, the abuses of the private car and private terminal-track and side-track systems must be stopped, and the legislation of the Fifty-eighth Congress which declares it to be unlawful for any person or corporation to offer, grant, give, solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce whereby such property shall by any device whatever be transported at a less rate than that named in the tariffs published by the carrier must be enforced. For some time after the enactment of the act to regulate commerce it remained a mooted question whether that act conferred upon the Interstate Commerce Commission the power, after it had found a challenged rate to be unreasonable, to declare what thereafter should, prima facie, be the reasonable maximum rate for the

transportation in dispute. The Supreme Court finally resolved that question in the negative, so that as the law now stands the Commission simply possess the bare power to denounce a particular rate as unreasonable. While I am of the opinion that at present it would be undesirable, if it were not impracticable, finally to clothe the Commission with general authority to fix railroad rates, I do believe that, as a fair security to shippers, the Commission should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place; the ruling of the Commission to take effect immediately, and to obtain unless and until it is reversed by the court of review. The Government must in increasing degree supervise and regulate the workings of the railways engaged in interstate commerce; and such increased supervision is the only alternative to an increase of the present evils on the one hand or a still more radical policy on the other. In my judgment the most important legislative act now needed as regards the regulation of corporations is this act to confer on the Interstate Commerce Commission the power to revise rates and regulations, the revised rate to at once go into effect, and to stay in effect unless and until the court of review reverses it.

Steamship companies engaged in interstate commerce and protected in our coastwise trade should be held to a strict observance of the interstate-commerce act.

The following are the declarations of various political parties at various times on the subject of railroad legislation by Congress:

The Labor Reform convention held at Columbus, Ohio, February 21 and 22, 1872, adopted the following plank in its platform:

"That it is the duty of the Government to exercise its power over railroads and telegraph corporations that they shall not in any case be privileged to exact such rates of freight, transportation, or charges by whatever name as may bear unduly or unequally upon the producer or consumer."

The Greenback convention held at Chicago June 9 to 11, 1880, adopted the following resolution:

"It is the duty of Congress to regulate interstate commerce. All lines of communication and transportation should be brought under such legislative control as shall secure moderate, fair, and uniform rates for passenger and freight traffic."

The Greenback national convention held at Indianapolis, Ind., May 28, 1884, adopted the following resolution:

"We demand Congressional regulations of interstate commerce; we denounce 'pooling,' stock watering, and discrimination in rates and charges, and demand that Congress shall correct these abuses, even, if necessary, by the construction of national railroads. We also demand the establishment of a governmental postal-telegraph system."

The Union Labor convention held at Cincinnati, Ohio, May 16, 1888, adopted the following resolution:

"The means of communication and transportation shall be owned by the people, as is the United States postal service."

The national People's convention held at Omaha, Nebr., July 2, 1892, adopted the following resolution:

"Transportation being a means of exchange and a public necessity, the Government should own and operate the railroads in the interest of the people.

"The telegraph, telephone, like the post-office system, being a necessity for the transmission of news, should be owned and operated by the Government in the interest of the people."

The People's Party convention held at St. Louis, Mo., July 24, 1896, adopted the following resolution:

"Transportation being a means of exchange and a public necessity, the Government should own and operate the railroads in the interest of the people and on nonpartisan basis, to the end that all may be accorded the same treatment in transportation, and that the tyranny and political power now exercised by the great railroad corporations, which result in the impairment, if not the destruction, of the political rights and personal liberties of the citizens, may be destroyed. Such ownership is to be accomplished gradually, in a manner consistent with sound public policy."

The Democratic national convention held at Kansas City, Mo., July 4–6, 1900, adopted the following resolution:

"We favor such an enlargement of the scope of the interstate-commerce law as will enable the Commission to protect individuals and communities from discrimination and the public from unjust and unfair transportation rates."

The People's Party convention held at Sioux Falls, S. Dak., May 9 and 10, 1900, adopted the following resolution:

"Transportation being a means of exchange and a public necessity, the Government should own and operate the railroads in the interest of the people, and on a nonpartisan basis, to the end that all may be accorded the same treatment in transportation, and that the extortion, tyranny, and political power now exercised by the great railroad corporations, which result in the impairment, if not the destruction, of the political rights and personal liberties of the citizen, may be destroyed. Such ownership is to be accomplished in a manner consistent with sound public policy."

The Silver Republican convention held at Kansas City, Mo., July 4–6, 1900, adopted the following resolution:

"Transportation is a public necessity, and the means of and methods of it are matters of public concern. Railway companies exercise a power over industries, business, and commerce which they ought not to do, and should be made to serve the public interests without making unreasonable charges or unjust discrimination. We observe with satisfaction the growing sentiment among the people in favor of the public ownership and operation of public utilities."

The Social Democratic (party of America) convention held at Indianapolis, Ind., March 6, 1900, adopted the following resolution:

"We demand the public ownership of all railroads, telegraphs, and telephones; all means of transportation and communication; all waterworks, gas and electric plants, and other public utilities."

Gen. Benjamin F. Butler, a delegate from Massachusetts at the national Democratic convention held at Chicago, Ill., July 8 to 11, 1884, introduced the following resolution:

"*Resolved*, That all corporate bodies, created either in the States or nation, for the purpose of performing public duties are public servants, and to be regulated in all their actions by the same power that created them at his own will, and that it is within the power and is the duty of the creator to so govern its creature that by its acts it shall become neither a monopoly nor a burden upon the people, but be their servant and convenience, which is the true test of its usefulness. Therefore we call upon Congress to exercise great constitutional power for regulating interstate commerce; to provide that by no contrivance whatever, under forms of law or otherwise, shall discriminating rates and charges for the transportation of freight and travel be made in favor of the few against the many, or enhance the rates of transportation between the producer and the consumer."

This, with other resolutions which General Butler offered as a substitute for the majority report from the committee on resolutions, was voted down.

[Declaration from Democratic platform, 1896.]

The absorption of wealth by the few, the consolidation of our leading railroad systems, and the formation of trusts and pools require a strict control by the Federal Government of those arteries of commerce. We demand the enlargement of the powers of the Interstate Commerce Commission, and such restriction and guaranties in the control of railroads as will protect the people from robbery and oppression.

Again in 1900 we declared:

[Declarations from Democratic platform, 1900.]

CORPORATE INTERFERENCE IN GOVERNMENT.

"Corporations should be protected in all their rights and their legitimate interests should be respected, but any attempt by corporations to interfere with the public affairs of the people, or to control the sovereignty which creates them, should be forbidden under such penalties as will make such attempts impossible."

INTERSTATE COMMERCE COMMISSION.

"We favor such an enlargement of the scope of the interstate-commerce law as will enable the Commission to protect individuals and communities from discriminations and the public from unjust and unfair transportation rates."

And again in 1904 we said:

[Declarations from Democratic platform, 1904.]

TRUSTS AND UNLAWFUL COMBINES.

"Individual equality of opportunity and free competition are essential to a healthy and permanent commercial prosperity, and any trust, combination, or monopoly tending to destroy these by controlling production, restricting competition, or fixing prices should be prohibited and punished by law. We especially denounce rebates and discrimination by transportation companies as the most potent agency in promoting and strengthening these unlawful conspiracies against trade."

INTERSTATE COMMERCE.

"We demand an enlargement of the powers of the Interstate Commerce Commission to the end that the traveling public and shippers of this country may have prompt and adequate relief from the abuses to which they are subjected in the matter of transportation. We demand a strict enforcement of existing civil and criminal statutes against all such trusts, combinations, and monopolies, and we demand the enactment of such further legislation as may be necessary to effectually suppress them."

Mr. DAVEY of Louisiana. Mr. Chairman, I yield to the gentleman from Missouri [Mr. COCHRAN].

Mr. COCHRAN of Missouri. Mr. Chairman, in the course of the discussion of the pending measures nothing has been said so far concerning the Commission's ineffectiveness prior to the abrogation of its chief power by the Supreme Court of the United States.

The majority bill restores to the Commision the power taken away from it by a decision of the Supreme Court—the power to fix rates. It does not remove difficulties which, during ten years in which the Commission exercised this power, prevented the Commission from effectively redressing wrongs suffered by the patrons of the railroads. Section 14 of the bill multiplies these difficulties. It opens still wider the door to interminable litigation and vexatious delays, with incidental unbearable expenses, which, up to this time, have rendered this forum inaccessible to the great multitude of small shippers and to isolated neighborhoods of small shippers, who are the chief sufferers from extortionate charges of common carriers.

Will some gentleman arise and tell me of a single case brought before the Interstate Commerce Commission between 1887 and 1897 which had for its object the redress of the wrongs of the small shipper, the small producer, or the small shopkeepers of small towns?

Early in the discussion—twenty years ago—opponents of this legislation contended that existing laws—the common law—and existing courts could give adequate remedies, but experience had shown that shippers could not afford the luxury of lawsuits which dragged their weary way through the courts for years, involving expenses generally far in excess of the benefits sought. Hence the Interstate Commerce Commission was created for their relief. And what was the result? Why, from the outset the absurdity of a small shipper or sparsely settled neighborhoods or small commercial cities seeking a remedy through the instrumentality of this Commission for wrongs suffered at the hands of a railroad company was apparent. To do so was to enter upon litigation which at the best would cost thousands, and which in no event would terminate inside of from three to five years.

So, gentlemen, we read the reports of the Interstate Commerce Commission and find that complaints have been made by great boards of trade as to discrimination in favor of rival commercial centers. We find complaints have been made by the independent refiners of extortion practiced upon them and of discriminations made in favor of the Standard Oil trust. The great cities, the millionaire coal miners, the owners of the elevators at great cities—in brief, the big concerns, the big interests—have gone to this Commission for relief, generally

complaining about discriminations in favor of other similar cities or interests, but nowhere does it appear that the small shippers—the millions who are the chief sufferers—have appeared before this tribunal. The remedies it provides are too expensive. You pretend to offer them a day in court for the redress of their grievances, but the statute serves notice by its very terms that you offer them years of delay.

The only bill brought before this House that provides for a speedy termination of these controversies, the only bill that affords a ray of hope to the small shippers in the outlying places, is the Hearst bill. Mr. Chairman, I admit the difficulty of the subject. Unfortunately, there is much truth in the contention that the corporations have been permitted to so far outgrow the restraints of law that the people's representatives are powerless to save their constituents from the wrongs we seek to prevent. Therefore the Hearst bill, if enacted into law, might not afford entirely adequate remedies nor absolutely safeguard the people against the delays and expense which made the law of 1887 inoperative even before the decision of the Supreme Court destroyed it. But, Mr. Chairman, the Hearst bill at least attempts to prevent endless delay in the proceedings of the Commission. Now, sir, how about the most salient features of the Townsend-Esch bill? If the great corporations, having upon their staff the ablest lawyers of the country, generally upon annual salaries, can obtain but one feature of the Townsend-Esch bill in a measure of this kind, as far as the small shippers—the vast multitude of their patrons and victims—are concerned, the rest is to them wholly unimportant. If they can drag the litigant through the courts year after year, harass him with the law's delay, involve him in exorbitant expenses, what care they for the statutes, commissions, or courts? The experience of a single complainant would be sufficient to deter others from entering upon a similar enterprise.

Before directing attention to the only feature of the Townsend-Esch bill which I will have time to discuss, let me say that I do not believe that the majority of the Committee on Interstate and Foreign Commerce desired to give the relief demanded by the country when they brought in this measure. I do not believe that the committee as constituted has ever desired to bring into this Congress a bill such as the people must finally have. Certainly the Townsend-Esch bill is not the bill suggested by the President in his message to Congress. If it is, he has already taken many steps backward. If it is, he has already abandoned his demand for a law giving the Interstate Commerce Commission power to fix rates and providing that a rate so fixed shall remain in force unless and until reversed by the courts.

Such a measure would minimize the expense of litigants, simplify the proceedings of the Commission, and go a long way toward solving the problem. But, sir, there is nothing of that kind in this bill. Therefore, I repeat, that if the President approves it, evidently he is not prepared to stand by his guns and insist upon the most vital suggestion contained in his message, and without this any law we may pass will be nugatory, worthless.

Now, sir, concerning this most important matter—the promotion of a speedy disposition of complaints—let us see what is the deliberate purpose and intention of the authors of this Townsend-Esch bill. I assume that it was not written in Washington. I assume that two or three other bills which were introduced were not written in Washington; and while we never will have proof of their origin we know that their authorship may be attributed to circles inimical to the regulation of interstate commerce by an effective commission.

The Townsend-Esch bill, after vesting the Commission with power to fix rates, goes on to say that after the Commission shall have determined the rate to be unreasonable it shall become operative thirty days after notice thereof—

> But at any time within sixty days of the date of such notice any person or persons directly affected by the order of the Commission, and deeming it contrary to law, may institute proceedings in the court of transportation sitting as a court of equity to have it reviewed and its lawfulness, justness, and reasonableness inquired into and determined.

Now we turn to section 14 and we find:

> That the court of transportation, as a court of equity, shall be deemed always open for the purpose of filing any pleading, including any certification from the Interstate Commerce Commission, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings, including temporary restraining orders preparatory to the hearing upon the merits of all cases pending therein.

And there you are! Every offensive feature of the law we are amending is here retained and amplified. Instead of less machinery, we are to have more. Instead of more summary proceedings, we are to have a longer road to travel. Under the act of 1887, as construed by the courts, there was a trial before the Commission; then the railroads carried it up, and there was a trial in the Federal courts, and then the case was carried up to the Supreme Court of the United States.

Section 1 restores the power taken away from the Commission by the Supreme Court. Section 14 renders the exercise of this power in such manner as to help the people absolutely impossible.

Does the gentleman from Iowa, chairman of the committee which reported this bill, believe that a farmer, or half a dozen farmers, in his district, oppressed by extortionate rates, could afford to or would send an attorney to Washington to appear before the Commission, knowing that even if they won the case there they must then send an attorney to Washington to appear before the appellate court and, later, send an attorney to Washington to appear before the Supreme Court? Does he not know, and does not every member of the committee that brought this bill here know, that a bill which permits such procrastination, such delay, and such expense provides a remedy that is entirely beyond the reach of the common people and the small shippers, and do not all of us know that the small shipper, the small city, the small industry are the chief sufferers from prevailing evils? The question arises then, gentlemen, why do you not respond to the public demands for the regulation of interstate commerce? Why have you sanctioned this monstrous measure?

And, Mr. Chairman, we are considering the bill under the gag rule, which has applied to all important measures brought before this body during the past eight years. We are deprived of the right to offer amendments. We are allowed only a few hours in which to discuss the bill, then the substitute will be voted down, and then you will call the roll and expect the Democrats to do as they have done in this House before—vote for your measure, knowing that it is worthless, because it pretends to comply with the will of the people, but afraid to vote against it for fear the country will say they voted against the regulation of railroads.

I hope that no Democrat will vote for this bill. To vote for it and place it upon the statute book would be an impediment to reform and to any step in the direction of reform. Were we to place it on the statute book it would be said, "Let us see what it will do;" "Wait a while, and see if it does not accomplish the purpose." Meantime the propaganda against all such attempts at Government interference with trusts, corporations, and monopolies would cite the failure of this statute to do any good as an argument against another attempt in the same direction. And so for five, six, or eight years we will have no effective legislation.

But the friends of this measure do not expect it to become a law. They wanted to do something seemingly responsive to public sentiment, but they have not dared to bring in a measure couched in plain language and leveled squarely at the evils I have pointed out. They have brought in a bill which pretends to afford relief to the people, but its provisions exclude the hope that it would afford redress for the wrongs which they pretend to deplore and abhor.

And, Mr. Chairman, the Davey bill is a little—just a little—better. It does, in express terms, say that a rate, when fixed by the Commission, shall remain in force until reversed by the appelate court, but it is as defective as the Townsend-Esch bill in every other respect. I think it indispensable that in appeals from the decisions of the Commission the jurisdiction of the appellate court shall be limited to a review of the case upon a transcript of the proceedings of the Commission. I therefore condemn as irreclaimably bad any measure that provides for, or even opens the door to, the very evils which experience has pointed out—a new trial in the upper court with endless delay and expense as an inevitable consequence.

In conclusion, I desire to state what I think is essential to the proper control of the interstate commerce common carriers. In the first place, the railroad companies should not be dealt with alone. The express companies, the fast freight lines, the private car companies should be placed under the control of this Commission. Gentlemen on the other side insist that this bill provides for this. I challenge any gentleman to point out a line in hte bill which authorizes this claim. [Loud applause.]

The CHAIRMAN. The time of the gentleman from Missouri has expired.

Mr. COCHRAN of Missouri. I would like to have five minutes more, Mr. Chairman.

The CHAIRMAN. The Chair would say to the gentleman that the time allowed for the general debate is fixed by the rule.

Mr. COCHRAN of Missouri. I know it is.

The CHAIRMAN. The rule also provides that all of that time is to be controlled by the gentleman from Iowa [Mr. HEPBURN] and the gentleman from Louisiana [Mr. DAVEY]. The

committee can not extend the time, and in the opinion of the Chair the committee can not, by granting unanimous consent, take from the control, either of the gentleman from Iowa or of the gentleman from Louisiana, any of the time remaining under their control.

Mr. HEPBURN. Mr. Chairman, I will yield to the gentleman from Missouri five minutes. [Applause.]

The CHAIRMAN. The gentleman is recognized for five minutes.

Mr. COCHRAN of Missouri. As I was saying, Mr. Chairman, it should include all private-car companies, it should include every corporation, company, and person engaged in the business of carrying the people's freight to market in interstate commerce. It should not limit the remedies to complaints made by individuals or by boards of trade, but it should distinctly provide for proceedings through the mediation of the various States in the interest of their citizenship. It should clearly define methods and means by which State railroad commissioners and other State officers might, without any specific allegation of a particular overcharge, bring the subject of the classification and rates on any interstate line to the attention of the Commission and have a redress of the grievances existing.

In the southern part of my State particularly, and to a great extent all over it, small shippers are almost the sole patrons of the railroads. Many of these shippers could not afford to pay $10 to a lawyer to protect their rights. Many of them ship only occasionally and in small quantities, yet the aggregate of that great commerce exceeds the value of the wheat crop of many agricultural States of the Union. Hundreds of people are involved. Combination is impossible. Cooperative steps for the redress of their grievances is impossible.

The same conditions exist in all the States. In some States doubtless this class—the small shippers—is relatively larger than in Missouri. That they can in any manner invoke remedies such as section 14 of the Townsend-Esch bill points out is preposterous. The State must assume guardianship of their interests, therefore any statute which does not empower each State to appear before this Commission and complain in general terms as to the rates charged, the system of classification partially enforced, the furnishing of utilities, etc., by a particular railroad in a particular locality can not be even effective.

But far more necessary than this even is the prevention of the various subterfuges by which overcharges, rebates, and discriminations are made effective; the refusal of equal facilities to all cities, large and small, and to all shippers; the overcharge of the terminal company, really covering the overcharge of the railroad company, imposed by a separate corporation, so that when you inquire about the rate from one town to another you find the rate charged is all right. It is fair on its face, but an extortionate charge for terminal work makes a gross rate that is oppressive to commerce.

The menas of extortion and discrimination are numerous. Here is one of them. When the Commission orders a lower grain rate or a cessation of discrimination against a particular market, the railroad company may meekly comply with the order, but thereafter it pays the elevator charges for one city or for favored shippers and not for others.

Mr. Chairman, if the people may not hope for relief from Congress their case is hopeless. The railroads, by consolidation and combinations, are managed by a small group of financiers. To deal with one railroad is to deal with all its pretended competitors, so this door of competition is also closed. A Member of this House told me a day or two ago that a committee from his town went up to New York recently to see the managers of a certain railroad about a railroad situation that was oppressive. They asked for certain relief, and they were turned down and refused that relief. They concluded they would go and see the directory of a rival company and offer a subsidy or something to see if they could not get that company to build into their town. When they went to see these gentlemen to make inquiries about extending their road to their town they met the identical gentlemen who had turned down their application for relief from the other corporation.

Mr. Chairman, the Congress must solve this problem. No hypocritical cry that the advocates of reform are socialists or anarchists will postpone its consideration by the people or absolve their representatives from responsibility. No longer may gentlemen hide behind the declaration that this bill or that bill tends to socialism. What promotes the propaganda of socialism? It is the lawlessness of the corporations, trusts, and particularly the common carriers of this country.

Since this matter came before Congress, many gentlemen have pretended to be frightened at the specter of Government ownership. Gentlemen, what incites the demand for Government ownership of railroads? It is growing, and its advocates are making converts every year. Why? Because many who recognize the dangers and difficulties of Government ownership, men essentially conservative in their views, men who hesitate to involve the Government in what might be a dangerous enterprise financially, and a still more dangerous enterprise politically, see constantly in current events other dangers and other difficulties far more momentous. The attitude of the great corporations affrights them and they are beginning to ask themselves: "Shall we have Government ownership of railroads, or shall we continue to live under railroad ownership of Government?" [Applause on the Democratic side.]

[Here the hammer fell.]

Mr. HEPBURN. I yield to the gentleman from South Dakota [Mr. BURKE].

Mr. BURKE. Mr. Chairman, as a member of the Committee on Interstate and Foreign Commerce, I joined with the majority in a favorable report upon the bill now under consideration. I did so after listening to the hearings which were had before the committee, lasting for a period of several weeks, and after giving the subject careful consideration.

I am in favor of legislative regulation of transportation lines engaged in interstate commerce. I believe in the principle, as stated by the President, that the highways of transportation must be kept open to all upon equal terms.

Mr. Chairman, this proposed legislation is the result of a demand which began some years ago, soon after the decision of the Supreme Court in 1897, when it was declared that the law did not give to the Commission the power to fix a rate. This legislation has been advocated and demanded by the shippers of this country, and it would only seem to be reasonable and fair that in a case where a rate has been challenged, and there is a question between the shipper on the one hand and the railroad on the other, that there should be some tribunal to determine the question, and not leave it to the one interested party—namely, the railway company.

This bill does all that has been demanded. It does all, in my opinion, that is necessary at this time, in view of the legislation that we already have had upon the subject of railroad regulation.

A great deal has been said in this debate and since this bill was introduced, claiming that it did not go far enough, that it did not do this, and that it did not do that. But, Mr. Chairman, the question that the committee had under consideration was the one question of whether or not the powers of the Interstate Commerce Commission should be enlarged to the extent of giving that Commission the power to fix a rate, which rate should go into effect when fixed by the Commission and remain in force until reversed by some judicial tribunal. I want to read what the President said in his last annual message on this subject:

> While I am of the opinion that at present it would be undesirable, if it were not impracticable, finally to clothe the Commission with general authority to fix railroad rates, I do believe as a fair security to shippers the Commission should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place; the ruling of the Commission to take effect immediately, and to obtain unless and until it is reversed by the court of review.
>
> The Government must, in increasing degree, supervise and regulate the workings of the railways engaged in interstate commerce; and such increased supervision is the only alternative to an increase of the present evils on the one hand or a still more radical policy on the other. In my judgment the most important legislative act now needed as regards the regulation of corporations is this act to confer on the Interstate Commerce Commission the power to revise rates, the revised rate to at once go into effect, and stay in effect unless and until the court of review reverses it.

Now, Mr. Chairman, I have said that this bill supplies the only legislation for which there has been any considerable demand.

The bill proposes to do exactly what the President has recommended. It is the opinion, Mr. Chairman, of the shippers of this country that this is all the legislation that is needed at this time. It is the opinion of the Interstate Commerce Commission that this is all that is necessary at present. It is the opinion, I understand, of able lawyers who have given this question their careful attention for many years that this is all that is necessary. It is, Mr. Chairman, exactly what the President has recommended in his message, and he has not recommended anything more.

Mr. THAYER rose.

Mr. BURKE. I beg the gentleman's pardon, but my time is limited and I can not yield. Therefore I say, Mr. Chairman, it is not an argument to say at this time that this bill ought not to be considered and passed because it does not go far enough. I am going to incorporate in my remarks some of the testimony showing that the only demands made from the shippers' associations of this country has been for this identical legislation. I believe, Mr. Chairman, that the enactment of this law in itself

will have a salutary effect on the railroads, and in that respect alone will accomplish much.

Mr. E. P. Bacon, of Milwaukee, representing the shippers of the country, and who has been most active in urging that the powers of the Interstate Commerce Commission be extended, stated before the committee that the complaint of the shippers was not because of excessive rates, but in regard to some form of discrimination. I quote from his statement as follows:

Mr. BACON. I appear before you in behalf of the commercial organizations of the country representing various branches of trade and of industry, to the number of 424, of the committee representing which I have the honor to be chairman, for the purpose of urging that the legislation which has been before Congress for so long a time, the amendment of the interstate-commerce act for the purpose of giving it effectiveness by enlarging the powers of the Interstate Commerce Commission, be expedited to the utmost possible extent.

The CHAIRMAN. Now, to get back to this matter of the character of the complaints that are made. Is is not true that the great volume of complaint is with regard to some form of discrimination, either in rates, or as to persons, or as to commodities, or as to localities?

Mr. BACON. That is the burden of the complaints, so far as shippers are concerned.

The CHAIRMAN (continuing). And the people whom you represent, as you have just stated, have but little care as to what the rate is if it is equitable with regard to all of the shippers?

Mr. BACON. That is it.

I find that in the eighteen years since the Interstate Commerce Commission has been in existence it has accomplished a great deal, and many of the abuses and irregularities which the act originally aimed at have been eliminated. For the purpose of showing the effect of the decisions of the Commission and what has been accomplished, I will say that it was claimed in the hearings—and not disputed—that in the eighteen years that the Commission has been in existence 90 per cent of all the claims and questions presented to the Commission have been adjusted without even formal hearing, and of the remaining 10 per cent hardly more than 2 per cent have been the subject of litigation.

In other words, 90 per cent have been disposed of without formal hearing, and 10 per cent have been subject to formal hearing, and of that 10 per cent, at the outside, only 2 per cent have been the subject of litigation, under the decisions of the Commission growing out of matters covered by the interstate-commerce act. In all there have been forty-three cases of litigation, with only twenty-five relating to rates, and in twenty-two out of the twenty-five cases the decisions of the Commission were reversed by the court.

Mr. Chairman, upon the subject of rebates I wish to say that the testimony before the committee demonstrates conclusively that since the enactment of the so-called "Elkins law" rebates, secret rates, and cut rates have practically ceased and, furthermore, that no additional legislation is necessary upon this subject. I will read from the statement of one of the Commissioners, Judge Clements, who appeared before the committee, and it will be noted that he says that what I have stated is true as to the granting of rebates and other discriminations, and that he believes such questions as terminals and private lines can be reached under existing law. I want to read the following:

Mr. CLEMENTS. It is the universal testimony, not only of railroad men, but shippers, that since those investigations and disclosures and the publicity that was given to it through the press and otherwise, and the injunction proceedings were instituted and maintained, that that practice of directly cutting the rate or paying rebates in the form of rebates, has very largely disappeared. It has been corrected, and that is the universal testimony, there is no doubt about it. I do not mean to say that there are not violations of the law here and there, as there are violations of other laws, and as there always will be. You have never been able to suppress counterfeiting or theft or any other crime entirely; but with great effect and success these practices of paying rebates and shipping at cut rates, deviations from the published rate, have disappeared in the last two or three years as the direct result of these investigations, the publicity and the exposure, and the injunction proceedings which have been had. These were not all. I mention these because they occurred about the same time. I will say more; that it was a scandalous condition, this general condition; it was a shame, and was acknowledged by the carriers and by the public as being one intolerable, that resulted in the passage of the law known as the Elkins bill. It had more to do with it than anything else which followed the succeeding year.

Mr. BURKE. I understand you to say that discriminations by reason of a secret rate or cut rate or rebate have practically ceased?

Mr. CLEMENTS. As compared with what was going on three or four or five years ago, yes. I do not mean to say in this vast country, with all the variety of commercial interests and industries that there are, that there is not some of that going on, and probably there always will be, but it has been very greatly diminished.

Mr. BURKE. I believe you stated that certain proceedings were instituted in the way of injunctional proceedings under the Elkins law.

Mr. CLEMENTS. Yes.

Mr. BURKE. Is there legislation adequate and sufficient on that point?

Mr. CLEMENTS. Well, we have several cases pending now under the Elkins law, and it is a little too early to say it will be sufficient in all respects, because it has not been tested as we have had to test these former laws, by judicial procedure.

Mr. BURKE. Have you any reason to think at this time that it is not adequate?

Mr. CLEMENTS. I have no suggestions to make in the way of further legislation to cover what are known as secret rebates and cut rates, and so on, which are covered mainly by the Elkins bill; but among other things one important thing is to practically prohibit and effectually stop certain abuses in respect to these terminal railways and car lines. For instance, an industrial plant that was a manufacturer and was running for no other purpose some few years ago has had switches put in and has incorporated as a railroad, and then they ask of the real railroad a division of the rates. Competition between carriers leads to that.

The CHAIRMAN. Is it your opinion that the present legislation gives power to the Commission and the courts to remedy those evils?

Mr. CLEMENTS. There is some difference of opinion among us about that.

The CHAIRMAN. I am asking your opinion.

Mr. CLEMENTS. It is stoutly denied by the car-line owners, and by the railroads, too, that use those car lines, that the Commission can pass upon the reasonableness of a refrigerator charge, an icing charge made in connection with the transportation of fruits and vegetables coming from California and other points to the eastern market. A great many of those railroads now have exclusive contracts with a great many of these companies, that these refrigerator goods shall be handled by the roads of those companies. The railroads do not publish their schedules for that service——

The CHAIRMAN. I was asking you particularly with regard to the two instances that you gave where a fictitious railroad is created for the purpose of a joint rate, and where an extravagant mileage is paid.

Mr. CLEMENTS. I do not see why that can not be found upon the facts to be a rebate, where it is excessive.

The CHAIRMAN. Then in your judgment the present legislation is sufficient to remedy those evils?

Mr. CLEMENTS. That is what I think, although that is an untried question. We have some matters of that kind now pending.

I have some misgiving as to whether or not there will be the benefit from the proposed legislation that the country expects, because, Mr. Chairman, I doubt very much indeed whether or not this or any other bill can be enacted into law that will do away with what the shippers of the country have been complaining of for so many years. It is not a question of exorbitant or excessive rates; it is rather a question of discrimination, a question of differentials, and I say, Mr. Chairman, that it is not in the power of a railroad, it is not in the power of any commission, it is not in the power of mortal man, to fix a differential that will be exactly equal and satisfactory in its workings; it is an absolute physical impossibility. I will show from the record, Mr. Chairman, that the shippers of the country have not been complaining of excessive rates, but have been complaining mostly from discriminations arising, I might say, from differentials. I will incorporate in my remarks, as bearing upon this phase of the case, a portion of the testimony of A. C. Bird, vice-president of the Wabash, Missouri Pacific, Iron Mountain, Denver and Rio Grande, International and Northern Texas, and Pacific railroads, in which he says that the question of complaint is in regard to differentials, and that he does not believe that there can be any power that can maintain and establish a differential.

I quote from the record the following:

Mr. MANN. Suppose the Interstate Commerce Commission should, after a hearing, fix the rate on grain from Iowa points to New Orleans and Galveston, and in the same order fix the rate on grain to New York, Philadelphia, Baltimore, Newport News, and other Atlantic ports, in such a way that either they would establish the actual rate or else establish the actual differential, so that that rate could not be varied without a further hearing and order of the Commission, which might or might not be had within a shorter or longer length of time; what effect would that have upon the communities and the shipment of grain and the routes?

Mr. BIRD. It depends largely upon which side of the question you are looking at it. I do not think it is in the power of anyone—the Commission or any body of men—to fix an arbitrary differential which shall govern matters of that importance that will not involve great hardships to the producer. Conditions change rapidly. A rate that might be a reasonable rate from St. Louis or Kansas City to New Orleans to-day might become very burdensome in a few months. The point I am trying to make and will bring out in answer to your question, perhaps in a roundabout way, is this: The burden of complaint will be in regard to differentials. I think that is admitted. That is the chief cause for demand for regulation—the regulation of differentials. There is no power that can establish and maintain a differential unless it has control over both the high rate and the low rate. Please to keep that prominently in view; they must have complete power or they will be ineffective. They must have the power to prohibit reduced rates. They must have the power to compel an advance of rate; or they can have no power over the establishment of a differential.

I believe that the passage of this bill will supply the missing link. I believe that with the law already upon the statute book and the enactment of this measure the railroads of this country will be so regulated that, with the observance of the law and an enforcement of law when not observed, there will not be much occasion in the future for the complaints that have prevailed during the past few years.

Mr. Chairman, before concluding my remarks I want to bring to the attention of the House how railroad rates are made, as I know it will be interesting, as it seems there is no scientific process by which rates are determined and that the question of capitalization does not have as much to do with it as many are led to believe and that the cost of the service has but little to do with the matter. There does not appear to be any difference of opinion between the railroads and the Commission as to the method of making or determining a rate.

Mr. A. C. Bird, vice-president of several railroads, stated on the question of rate-making as follows:

The making of rates is not an exact science. There is not a tariff in the United States, according to my best belief, that has been made on any scientific basis. No one has been found that knows enough to make such a tariff. The fact is that rates are made by comparison, compromise, and competition, and those are the underlying forces that determine what the rate shall be.

Mr. BURKE. What effect does the cost of service have upon rates?

Mr. BIRD. I do not think that anyone can make a tariff with sole reference to the cost of service.

I now want to read what Judge Clements, of the Interstate Commerce Commission, said on the subject:

Mr. BURKE. May I ask you one question there?

Mr. CLEMENTS. Certainly.

Mr. BURKE. If I understand you correctly, in determining a rate you do not consider to any great extent the cost of the service?

Mr. CLEMENTS. Well, it can not be considered for the reason that it is not ascertainable; but of course that is looked to as far as it can be considered.

Mr. BURKE. If I understand you correctly, the Commission, in determining a reasonable rate, does it in exactly the same way and on the same basis that the railroads say they do it?

Mr. CLEMENTS. That is my understanding. We consider all the things which they consider. I do not think there is any difference between us about that. They sometimes insist upon giving more effect to competition than we do at some points, and use competition for a justification for some other things they do. We differ about that. But so far as the basis of considering these things is concerned, it is the same, whether it is by the Commission or by the railroads.

The CHAIRMAN. What is the method pursued by the Commission in ascertaining what is a reasonable rate? To what factors, what circumstances, do they look—how do they get at it?

Mr. CLEMENTS. Well, the Commission considers such testimony and facts as it may get relating to many matters, among which are the bulk of the article as compared with its weight and its value, how much space it will take up in a car as compared with its weight and its value, the length of the haul, the value of the article, the service of the carrier, and also the question of competition. In addition to that it considers what the traffic will bear. You can not put the same rate on low-grade freight as you can put on high-grade freight. For instance, you can not put the same rate on sawed logs that you can on dressed meats, which are a higher grade article. So that value is necessarily an important factor.

The CHAIRMAN. Is there any mathematical method of determining it?

Mr. CLEMENTS. There is absolutely none, I think—I say I think there is none—by which you can work out to a mathematical demonstration that a particular figure is a just and reasonable rate. You can not do it, because you can not count the cost of the traffic to the carrier of its movement. There are many elements that you can not figure; they are only estimates. That is the utmost that the railroads undertake to do in considering these matters. And it is one of those questions that in my judgment is not susceptible of any such fine measurement as a demonstration like the calculation of interest on a note or any such thing as that.

In concluding, Mr. Chairman, I hope that every Member on this side of the House will vote for the bill reported by the committee, and I also hope that the Members on the other side of the Chamber will follow the advice of one of their distinguished leaders and "toe mark" the President, and let the bill pass without a dissenting vote. [Applause.]

Mr. ESCH. Mr. Chairman, there are gentlemen on this floor who have declared that this is the most important piece of legislation that has come up for consideration since the rebellion. There are others who have declared that it amounts to nothing. The declaration of these extreme views clearly indicates that the pending legislation is a compromise. We of the committee claim nothing more for it; we admit that it is an important piece of legislation. We deny, however, that because it is important we should refuse to enact it. After due consideration we have brought it to you for your consideration, believing that under the circumstances it affords a ready and complete relief from the ills the public now suffers.

This is not new legislation. As early as 1886 a Senate investigation involving almost the entire field of the relations of the railroads of the country to the General Government resulted in the enactment by Congress in the following year of the so-called "Cullom bill," or interstate-commerce act. This act, passed under the constitutional provision granting Congress the power "to regulate commerce with foreign nations and among the several States," delegated to a commission, consisting of five members appointed by the President and confirmed by the Senate, certain duties concerning the regulation of rates on railroads, with full right "to inquire into the management of the business of all common carriers subject to the provisions of the act."

Ever since 1887 regulation of rates by government has been a current question. Excessive rates, secret rebates, and unjust discriminations existing in the several States on intrastate commerce, against which no act of Congress could avail, the legislatures of over half the States, following the precedent established by Congress in enacting the interstate-commerce act of 1887, passed laws, more or less stringent, vesting in commissions the rate-making power. From 1899 to 1902 no less than twenty-three State legislatures have enacted such laws. In each State opposition was aroused. This lead to discussion and to the shaping of public sentiment. In these States State regulation of rates makes national regulation easy and proper. To the 190 Members of this House representing the 23 States having State control of rates no argument is needed to persuade them that this bill is not new, hasty, or unwise legislation. They know and the people they represent know that this is a moderate and not a radical or revolutionary measure; that the passage of some of the most drastic rate legislation in the several States was not followed by ruin or disaster to the railroads, but in some cases by enlarged business and earnings and by a better feeling between the railroads and the people. But this question has been kept alive in other ways than through the enactments of State legislatures and discussions in the press. The various decisions of the courts, including the Supreme Court of the United States, especially its decree in the maximum-rate case, decided in 1897, which held that the original interstate-commerce act did not give to the Commission the right to declare what should be a reasonable rate in lieu of one found by it to be unreasonable, have had the effect of emphasizing the inadequacy of some of the existing law and the necessity for strengthening it.

The annual reports of the Commission have repeatedly called our attention to the consequences of the decision of 1897 and asked that through Congressional action it be given the power it assumed it had since 1887 to declare a rate and then to enforce it. To quote its last report:

The Commission calls attention to the fact that there has been no amendatory legislation conferring power over this rate and making the orders of the Commission effective. In the present state of the law, after careful and often extended investigation, the Commission may find a rate complained against to be unreasonable and order the carrier to desist from charging that rate for the future; but it can not, though the evidence may and usually does indicate it, find and order the reasonable rate to be substituted for that which has been found to be unlawful. Any reduction of the wrongful charge amounts to technical compliance and frees the carrier from any legal obligation under the order. The Commission can condemn the wrong, but it can not prescribe the remedy.

Congress itself has not been deaf to this wide-spread agitation. By an act approved June 18, 1898, an Industrial Commission, composed in part of members of Senate and House, was appointed. One of its chief tasks was the investigation of railroad transportation involving governmental regulation. Experts were employed, two large volumes of testimony were published, and three years ago its recommendations were transmitted to the Fifty-seventh Congress. As pertinent to the discussion of the pending bill and as proof that its provisions are not novel or without the support of painstaking investigation, I wish to quote some of the recommendations of this Commission:

(*a*) For more stringent regulation of the conditions under which freight and passenger tariffs are published and filed, in order to secure greater publicity both in respect to established rates and contemplated changes.

(*b*) That strict adherence to published tariffs be required and rebates or discrimination prevented by an increase of the penalties therefor.

(*c*) For the definite grant of power to the Interstate Commerce Commission, never on its own initiative, but only on formal complaint, to pass upon the reasonableness of freight and passenger rates or charges; also the definite grant of power to declare given rates unreasonable, as at present, together with power to prescribe reasonable rates in substitution.

(*d*) For early hearings upon complaints and for prompt decisions by the Commission, the purpose being to obviate intolerable delays.

(*e*) That, to further the effectiveness of the Commission, its membership should be directly representative of the various interests concerned, in the persons of shippers or business men, traffic experts (rail and water), and men of legal training, and the number of commissioners should be increased to seven.

In still further reply to gentlemen who seek shelter behind the plea that this is new and therefore undigested legislation, notwithstanding the recommendations of the Industrial Commission on the subject-matter of this bill are already three years old, it is proper to say that elaborate hearings were had before committees of both Houses on rate and kindred legislation in the Fifty-seventh Congress and continued during the greater portion of the present session. One thousand pages of Congressional testimony added to that already at hand is conclusive proof that this is not hasty legislation, but, on the contrary, is the result of more painstaking, thorough, and elaborate investigation than has been accorded to any other subject of legislation for years.

Notwithstanding all this, we hear the old Spanish cry, "Mañana! Mañana!" Capital founded on franchises—gifts of the people, intrenched behind special privileges, grown strong and haughty through excessive gains—ever cries "To-morrow!" when the people demand a change.

That the time for change is near I do not doubt. President Roosevelt, in his last annual message, put in strong, brave words the people's thought and wish when he declared:

The Government must in increasing degree supervise and regulate the workings of the railways engaged in interstate commerce, and such increased supervision is the only alternative to an increase of the

present evils on the one hand or a still more radical policy on the other.

The most important legislative act now needed as regards the regulation of corporations is this act to confer on the Interstate Commerce Commission the power to revise rates and regulations, the revised rate to go into effect and stay in effect unless and until the court of review reverses it.

Not only was Congress spurred to action, but whole communities and States have become impressed with the necessity for this legislation. Thousands of petitions, resolutions, and telegrams from private individuals, corporations, and civic bodies, and the memorials from a dozen State legislatures filed with the Committee on Interstate and Foreign Commerce all attest the universal and spontaneous demand for relief from present conditions. This bill is the first one increasing the powers of the Interstate Commerce Commission in the regulation of rates which has attained this stage in its legislative career since the original act was passed. The hearty cooperation of the distinguished chairman of our committee, Hon. W. P. HEPBURN, of Iowa, in framing this bill and loyally supporting it in caucus and shaping sentiment in its favor, has been a large factor in giving it its present strength before this House.

No one questions our constitutional right to enact this legislation. Many years ago Justice Bradley, of the Supreme Court, used these words:

> But a superintending power over the highways and the charges imposed upon the public for their use have always remained in the Government. This is not only its indefeasible right, but it is necessary for the protection of the people against extortion and abuse.

Railroads are highways which "must be kept open alike to all on reasonable and equitable terms."

It has been often held by the Supreme Court "to be a rule of the common law that parties carrying on business which is public in its nature or which is embraced with a public interest can not select their patrons arbitrarily, but must serve all who apply on equal terms and at reasonable rates." It is further well established that "when the owner of property devotes it to a use in which the public has an interest he in effect grants to the public an interest in such use, and must to the extent of that interest submit to be controlled by the public for the common good as long as he maintains the use."

These principles being conceded, the pending bill raises no question of legality, but one of expediency or necessity. The gentleman from Massachusetts [Mr. MCCALL] yesterday advocated the application of the doctrine of laissez faire to railroads; that there should be little or no governmental control; that the railroads, like private enterprises, should be permitted to work out their own salvation without paternalism; that rivalries between individuals and communities should be of no concern to anyone save themselves and the railroads, and that in time everything would work itself out and be altogether lovely and of good report.

In the light of precedents long established and closely followed, I strongly dissent from this view of the proper relationship which should obtain between the General Government and public-service corporations, especially railroads. Actuated by a desire to make dividends for their stockholders, managers of railroads are prone to forget their duty to the public and that their very existence is due to a grant or franchise from the public. Railroad presidents, magnates, and managers should be made to understand that in exercising the right of eminent domain they have been endowed with a portion of the State's sovereignty, without which not a mile of track could be laid through private property; they should be made to understand that in furtherance of the construction of many of their lines great and generous grants of land by State and nation have been made them, grants which by reason of these lines have risen much in value, and in their sale largely reimbursed the cost of construction; they should be made to understand that in some instances immunity from taxation and other privileges and the voting of bonds for their special benefit encouragement was given by the public in the hope of mutual advantage, but with no expectation that the obligation would be forgotten or become one-sided.

The danger from failure to assert the authority granted us by the Constitution increases with each year's delay. The tendency toward combination has manifested itself no place else more strongly than among railroads. To-day seven or eight large banking syndicates control 175,000 miles, or seven-eighths of the total mileage of the country. Last week it was reported that the Erie line was to be absorbed into a transcontinental system extending from ocean to ocean. Is there anyone here who doubts that this dream of the Napoleons of finance will soon be realized? What limit is there to such combination save total absorption? When this goal is reached what is left of competition? What restraint to taxing traffic all it will bear? Even now the half dozen or more syndicates now dominating the railroad would have allied and friendly interests. In the language of the Industrial Commission, "Some effective remedy for the intolerable conditions which prevail under the law to-day must certainly be provided." And yet gentlemen on the floor will cry "Hands off" when a moderate and fair measure like the pending bill is presented as a remedy. To my mind, Mr. Chairman, the greater the combination the greater the need for Government control. Being in the nature of things monopolies, railroads, especially where in sole control of the territory with no rivalry on local rates, can absolutely make or unmake towns, cities, communities, sections of States, and even entire States, and they have done so in the past. A government is derelict in its duty to its people which permits such monopoly to continue. There must be some power somewhere over and above those corporations and independent of them to determine with absolute fairness their rights and those of the people whom they serve.

Our bill lodges this power in the Interstate Commerce Commission with the right, upon complaint and after full hearing, to order and declare what shall be a just and reasonable rate, practice, or regulation to be charged, imposed, or followed in the future in place of that found to be unreasonable or unjustly discriminatory.

Opponents of this legislation ominously declare that this is a dangerous power to intrust to any commission of seven men, no matter how able or conscientious. They say it is dangerous because so tremendous. Is it anywhere near as tremendous, and hence dangerous, as the power now being exercised by the seven or eight leaders of banking syndicates who control all the interests of seven-eighths of the railroad mileage of the country? Leaders whose fiat can cause stock and bonds, fabulous in amount and value, to rise or fall, whose decree can change the trend of our country's commerce, or levy tribute on one class or section for the benefit of another?

We should not be deterred from lodging vast powers in the hands of a commission because of fear that such powers will be abused or that mistakes will be made. As a republic we must have confidence in the instrumentalities we create to effect our purposes. We place great power in the hands of our President. We give our courts rights over life and property. We have found that great responsibility sobers those who exercise great authority, that civic honor still obtains and that few mistakes are made. But it is not intended, Mr. Chairman, by this bill to give to the Interstate Commerce Commission sole, autocratic, and final jurisdiction in determining the justness and reasonableness of a rate, practice, or regulation affecting the transportation of persons or property. We make the findings of this legislative tribunal reviewable by a specially constituted judicial tribunal, with further right of appeal therefrom to the Supreme Court of the United States. This procedure safeguards the interests of both carrier and shipper and furnishes a complete answer to the charge that this legislation leads to confiscation of railroads and ultimately to Government ownership. With full right of appeal to the courts of the land no rate fixed by the Commission can become or remain confiscatory.

Instead of paving the way to Government ownership, this bill, by granting merely a moderate but just degree of control, retards and discourages any further movement by the Government and in effect saves the railroads from themselves. I am not a railroad baiter nor one who believes that railroads have no rights which the public is bound to respect. On the contrary, their rights of property are entitled to the full protection of the law and the courts, but in coming into the courts they must come in with clean hands and must do equity if they expect equity in return. They have been most effective instrumentalities in developing the country and its industries, and while they have done much for the people, much have the people done for them. It would be wise if those who control the interests of railroads would accept this legislation instead of putting obstacles in its way. Action may be delayed for a little while, but soon a balked, tantalized, and outraged public will overcome all opposition, and what may now be done conservatively may later be done radically.

The evils sought to be remedied by this bill are unjust or unreasonable discriminations, practices, or regulations affecting the transportation of persons or property or the rates for such transportation. Cut rates, secret rates, rebates, discriminations as to individuals, communities, and commodities, excessive terminal, switching, and industrial-line charges, and even the charges of private car lines are some of the specific causes for complaint sought to be brought within the purview of this legislation.

In order that the nature, scope, and purpose of the power we desire to confer upon the Interstate Commerce Commission, and

the method of procedure when complaint has been made may be more clearly understood, I desire to quote sections 1, 2, and 3, and also section 13 of the original act, approved February 4, 1887:

Be it enacted, etc., That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however*, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

SEC. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

SEC. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Objection has been made, Mr. Chairman, that because specific reference has not been made in this bill to switching, terminal, industrial, and private car lines, the abuses they give rise to can not be reached by its enactment.

Section 1 of the original act, just quoted, applies the act to common carriers engaged in the interstate "transportation of passengers or property," and the last paragraph of the same section defines "transportation" as including "all instrumentalities of shipment or carriage." When, therefore, the pending bill gives the Commission the power to make any finding or ruling, declaring any existing rate for the transportation of persons or property, or any regulation or practice whatsoever affecting the transportation of persons or property to be unreasonable or unjustly discriminatory and to declare what shall be a just and reasonable rate, practice, or regulation, etc., we believe we have vested the Commission with ample power to reach the evils complained of. The icing of cars, which gives rise to the chief objection to the private car lines, is without doubt an "instrumentality of shipment or carriage" which would bring them within the jurisdiction of the Commission.

This bill is broad enough to give the Commission power over classification both as to items and grouping. Under existing law schedules of rates, fares, and charges are required to be printed, posted up, and copies filed with the Commission, but no control is exercised by the Government in the making of such schedules or the classification based thereon. If the Commission is to be given the power to change or fix rates it should also have the power to change or fix the classification. Otherwise, if the Commission lowered a rate, the carrier could by a change from a lower to a higher class recoup itself.

The freight traffic of the country is carried under two general classes of schedules known as "class tariffs" and "commodity tariffs." When no commodity rate applies, as on coal, grain, lumber, live stock, etc., the class tariffs obtain.

A freight classification consists of arranging in classes these latter tariffs, each article being given a class. A change in class means a change in rate. The United States is divided into three general freight classifications:

1. The official classification, being the territory north of the Ohio and Potomac rivers and east of the Mississippi River and Lake Michigan.

2. The southern classification, being the territory south of the Ohio and Potomac rivers and east of the Mississippi River.

3. The western classification, being the territory west of the Mississippi River, embracing traffic between Chicago, Peoria, and certain other points east of the river and points west of it.

In 1900 the railroads of the country through mutual agreement made a general revision upward in each of the three classifications. In the first, or official classification, 572 ratings were advanced—that is, raised from one class to a higher class, and only six ratings were lowered.

In the southern classification there were 531 ratings raised and 105 lowered.

In the western classification there were 240 ratings raised and 17 lowered.

As over 75 per cent of these changes affected shipments in less than carload lots, the increased freight fell upon the small shippers, jobbers, and manufacturers of the country, and not upon their larger, wealthier, and more influential rivals. With no restraint upon classifications save such as the rule of "all the traffic will bear" imposes, it can readily be imagined how secret rates, rebates, and discriminations may be possible under the guise of classification.

In order that the effect of this upward revision of ratings, made in 1900, may be made more apparent, I wish to offer a statement made by the Interstate Commerce Commission in reply to a resolution of inquiry adopted by the Senate March 11, 1904, relative to the advance in freight rates and the resulting increase in revenue of the railway corporations of the United States.

This statement shows total number of tons of freight carried by the railroads of the United States for the fiscal years ending June 30, 1899, 1900, 1901, 1902, and 1903, with the total revenue accruing therefrom; also the revenue which would have accrued at the average rate of 95.2 cents per ton for the years ending June 30, 1900, 1901, 1902, and 1903, this being the average rate for the year ending June 30, 1899; and the increase in the revenue for the years 1900, 1901, 1902, and 1903 resulting from the increase in the average rate per ton for those years.

Year ending June 30—	Number of tons of freight carried.	Total freight revenue as charged.	Amount of freight revenue at average rate per ton of 95.2 cents, being the average rate for the year ending June 30, 1899.	Increase.
1899	959,763,583	$913,737,155	$913,737,155	
1900	1,101,680,238	1,049,256,323	1,048,799,587	$456,736
1901	1,089,226,440	1,118,543,014	1,036,943,571	81,599,443
1902	1,200,315,787	1,207,228,845	1,142,700,629	64,528,216
1903[a]	1,221,475,948	1,318,320,604	1,162,845,102	155,475,502

[a] The figures given for the year 1903 represent about 98 per cent of the total mileage.

These figures indicate that as a result of the revision of classification in 1900 the revenues of the railroads of the country were increased over $155,000,000 above what they would have been had the rates and classifications of 1899 remained in effect. In justification of this large increase of the taxes, for all freights are taxes, upon the people, the railway officials claim that the increased cost of wages and materials required increased income, that the lean years of the early nineties having been succeeded by the fat years of Republican prosperity, the companies

should be permitted to secure their share of it. There is some force in this claim, but it is also true that the increased volume of business of these recent years would have yielded handsome dividends upon the basis of rates and schedules existing prior to 1900. It is also true that by reason of improved motive power, rolling stock, roadbed, and equipment greater speed, larger tonnage, and quicker and better returns are now possible. There can be no doubt but that under this bill the Commission would have the power to change a rate in a given classification although such change might involve other changes in the same classification. Judge Wing, in the district court of the United States for the northern district of Ohio, very recently decided that an order of the Interstate Commerce Commission holding an advance of hay and straw from the sixth to fifth class to be unlawful was itself unlawful, "in that it was an attempt on the part of the Commission to fix rates," the power to do which under the law as it is the Commission did not have.

It is conceded that the rates in this country are much less than in any country of Europe, that they are but one-half those of Great Britain. Such comparisons, however, ignore many factors in the problem. In Great Britain, for instance, the rate includes the cartage at both terminals; the hauls are, on an average, short, and correspond to those of our local freight. If our local freight charges only were compared with the freight rates of Great Britain the discrepancy would not be marked. It is the low through, or long-distance, rates that bring down our average.

I am not one who expects, through the passage of this bill, to witness a general reduction in the average of rates, but I would expect to see a more just and equitable distribution of the freight tax as to individuals, commodities, and communities. I would expect to see an end of rebates, cut rates, and discriminations. I would expect to see that stability of rates which to the shipping public is of even more concern than lower rates. I would expect to see an end of rate wars, which in their effects are more dangerous and disastrous than any action which the Commission under this bill will attempt to take.

The provisions of the pending measure are well known to the House and have received careful discussion. The salient features are thus epitomized in the majority report of our committee:

Section 1 of the bill confers upon the Commission the right to name a just and reasonable rate in place of one found to be unjust and unreasonable, and provides that the same shall take effect and become operative within thirty days from the date of service of the Commission's order upon the party directly affected by it. No provision is made for the suspension of said rate except upon reversal of the Commission's order by the court of review.

Section 4 provides for a penalty of $5,000 to be imposed upon the party refusing to obey the order of the Commission for every day of such refusal after the order becomes operative.

To increase the efficiency of the Commission it is enlarged to seven members and the salaries increased to $10,000. The work of the Commission is so great that five men have failed to perform it in a reasonable time, and many cases suffer for lack of time and opportunity to be heard and determined. The Commissioners' duties are so arduous and of such importance that the present salary of $7,500 is believed to be insufficient, and is therefore increased to $10,000. Men who are fitted for the great duties of Commissioners under the law as hereby amended can command the higher salary, and none but men of very highest ability and experience should be selected.

Section 7 provides for a special court of transportation to review the orders of the Commission in case of appeals. It is believed that cases will be greatly expedited, and that a court constituted as provided in the bill will become expert in matters of interstate commerce, and that a greater degree of uniformity and continuity will be found in its decisions than in those of a court of less expert experience.

The Department of Justice reports that four additional circuit judges are needed for the regular business of the circuits. It is thought that the proposed court of transportation will not be occupied all the time with interstate commerce cases and that it will therefore have time to perform the extra duties required in the Federal circuits.

This court is composed of circuit judges designated by the President for terms of five years, with the exception of four of the first judges appointed, whose terms are respectively one, two, three, four, and five years. So constituted the court has at all times four members who have had one or more years' experience on the bench.

The other sections of the bill are for the purpose of making the act more complete and effective.

In my opinion the objections brought against this bill lie largely in the creation of the court of transportation. Your committee was not hasty in coming to a conclusion. We believed, under all the circumstances and the testimony, that some separate tribunal must be created in order to expedite the findings of the Commission and to bring speedy relief. Looking at the experience which the Commission has had in the past under the existing interstate-commerce act, we found that its efforts were thwarted from year to year by processes and appeals in the existing Federal courts. We found in the testimony that there were cases pending four and five—nay, eight and nine—years, so that when a decision was finally rendered conditions had all changed, and the decision availed nothing. We therefore thought a separate and distinct court would expedite the findings of the Commission and would bring relief—a court that should have no other duty than to decide upon appeals from the Interstate Commerce Commission, a court not distinct and apart from the judiciary, but an integral part of it, composed of five circuit judges appointed by the President and confirmed by the Senate, of judges of high standing and capacity, who could devote their entire time, if need be, to the consideration of these complicated questions relating to rates. These judges should sit practically in continuous session, with four stated terms of court. They should be ready to receive and hear appeals at all times. They should have power to travel throughout the country wherever justice might be promoted. This was the idea we had when we created the court of transportation.

With reference to its operation we say that, constituted as it is, its decisions would receive greater respect than a decision by a court of appeals or a circuit or district court in which rate litigation is only incidental and not primary and exclusive. The judges of this new court in time would become experts on rate litigation and, understanding the conditions which change rates and the causes which influence rates, would be better able to determine the right of a case than would the average circuit or district judge in different portions of the country, with no prior experience with reference to rates. I am informed by an official of the Government who had long experience in litigation before the Commission and the Federal courts that it is sometimes difficult, if not impossible, to get circuit judges of the United States to sit in rate cases. They do not want to sit in such cases because of their highly technical and complicated character, requiring in their determination previous knowledge. It is the same feeling which some of the circuit judges have manifested when called to sit in patent cases, cases which presume scientific accurate and technical knowledge; but when we have a court of transportation and we have the proper men selected, whose duty it shall be to study rate litigation and to make that their life specialty, there will be no excuse for not bringing cases before them and getting a speedy hearing. We believe that this court being always open, being always ready, will expedite these appeals, whereas now under the existing practice it can not be done. By making a separate court we cut out one step in the course of appeal under the present procedure. We cut out one step in the progress of appeals as it would be under the Davey bill. We permit but one appeal from the court of transportation to the Supreme Court of the United States. That appeal must be taken within thirty days, and when it gets to the Supreme Court of the United States all other cases must yield save criminal causes. We have done the best we could to expedite this kind of litigation.

We believe with the machinery we have here afforded such litigation will be expedited, and that by having a special tribunal give its decision, that decision will create respect not only on the part of the railroads, but also on the part of the shipping public. We therefore have created the court of transportation, believing it would aid and expedite this legislation. We have put into the first section of the bill the virility needed to carry out the object of the legislation. The original interstate-commerce act, emasculated by the decision of 1897, needs to have virility put back into it by a separate act of Congress. We believe that this act does that in declaring that the Commission shall have power to change a rate found to be unjust and unreasonable, that it shall have power to change a practice found to be discriminatory, that it shall have power to change a regulation found to be to the detriment of the public. When we have given that power in that particular language we feel that we have covered most, if not all, of the evils from which the shipping and the general public now suffers.

It has been said on this floor that this legislation is revolutionary; that its passage would be a deathblow to railroad interests; that they would be robbed under the pretense of law. Well, I was interested in looking up the quotations on the stock market, to find out whether the action of this Congress in this legislation had any such tendency. I find in Henry Clews's weekly statement that the quotations of stock of the Baltimore and Ohio road on last Saturday, a week ago, were 102¾. I find that on Tuesday, the day after this bill was reported, when its contents were known throughout the length and breadth of the land, the stock had risen to 103; on Wednesday it stayed level at 103; on Thursday it had risen to 104½, and on last Friday it had risen to 105⅛. In looking over the quotations of Pennsylvania stock, I find a similar good and healthy tone. This does not look as if the stock market was being excited and alarmed at this legislation. Why? Because rate-making powers have already been granted to commissions in no less than thirty of the States of the Union without disastrous results. Twenty of these States have strong commissions with power to fix and regulate rates, and yet in those States they never have com-

plained that this legislation was dangerous or tended in any way to anarchy.

These States having these strong commissions are among the strongest and richest States in the Union—Minnesota and Iowa and Illinois and Kentucky and Mississippi and Louisiana and Texas. In Texas they have the most rigorous law on the subject of railroad control of any in the Union, and yet Texas lives and prospers, and the bonds of her railroads are considered the safest form of security, because under the law of that State all water and wind must first be extracted before these bonds can be placed on the market. I believe that in giving the Commission the power to fix a rate we should give the Commission power to investigate whether there has been unwise, extravagant, or wasteful management; whether there is any water in the stock upon which dividends are to be paid. In a decision rendered by Justice Harlan in the Nebraska case he uses this language:

> If a railroad corporation has bonded its property for an amount that exceeds its fair value, or if its capitalization is largely fictitious, it may not impose upon the public the burden of such increased rates as may be required for the purpose of realizing profits upon such excessive valuation or fictitious capitalization; and the apparent value of the property and franchises used by the corporation, as represented by its stocks, bonds, and obligations, is not alone to be considered when determining the rates that may be reasonably charged.

So that when we give this Commission power to fix reasonable rates that Commission should have the power to ascertain the actual value of the corporation, so that the general shipping public would not be compelled to pay an excessive freight or passenger rate for the purpose of making dividends upon watered stock. With this power a reasonable rate can be secured, and with this power, as my colleague from South Dakota [Mr. BURKE] says, most of the other evils now complained against may be met. In my opinion the case of an industrial line, of a terminal line, or a switch line can be reached by section 1, wherein is given the power to "declare and order what shall be a just and reasonable rate, practice, or regulation." If these cases could not be reached by section 1, they could be reached by section 2, which gives the Commission the power to declare a joint rate and to apportion the same. If these industrial, terminal, or switching lines share a part of a through rate then the Commission, under section 2, can apportion the rate between the terminal or other lines and the through line, and thus reach and remedy the evil. It seems to me that the main difficulties to be met by this legislation are discriminations as to commodities and as to communities. The Elkins Act—a criminal statute—meets practically the demand for legislation against discriminations as against persons, and the provisions in this law will meet the discriminations as to commodities and communities. [Applause.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. HEPBURN. Mr. Chairman, I yield twenty minutes of time to the gentleman from Ohio [Mr. GROSVENOR].

The CHAIRMAN. The gentleman from Ohio [Mr. GROSVENOR] is recognized for twenty minutes.

Mr. GROSVENOR. Mr. Chairman, if it so happens that this bill, which will pass the House of Representatives to-morrow, shall be favorably considered in the Senate of the United States and receive the signature of the President, and it can be proved to the satisfaction of the American people that a single valuable and essential idea of the bill emanated from the Democratic party, it will be at once an astonishment to the public and a great credit to that organization. [Applause.] Following our footsteps, "toe-marking" our tracks, camping to-night where we camped last night, and asking to be taken into our camp is not a new policy or practice of the Democratic party. Now, Mr. Chairman, I do not want to strip from the glory and honor that Democrats on this floor are taking to themselves one jot or tittle, but I can not sacrifice the truth of public history by yielding to any claims that undertake to assert either one of two things. First, that it has been the Democratic party or its essential and conspicuous leaders that have originated the ideas of this legislation, or that to-day the minority on this floor stand in accord with the President of the United States. I had occasion something like a year ago to defend the President of the United States against assaults made upon him by the Democratic minority, and among other things which fell to my lot was to defend him against assaults I myself had made upon him. [Laughter and applause.]

I have flattered myself in the light of what occurred in November last, that either one of two propositions is true, that I must have made a great success out of that performance, or else the whole matter as put forward by the Democrats was humbug and unworthy of notice when it was brought to the attention of the country on the other side of the House.

Now, Mr. Chairman, the claim is made here again that the Republican majority of the House of Representatives is being lassoed and driven by the cooperation of the Democratic minority and the President of the United States to hasty and possibly unconsidered action upon the measure now pending. I want to point out that in this allegation our friends on the other side are now, as they uniformly are, very unfortunate. They bring back to the public mind a true history of the steps through which and the conditions out of which this legislation has come. It is not a new idea. It is not a new suggestion of the President as embodied in his message of this year. It was not a new idea in the President's speech at Philadelphia the other day, but it was the development of a continuous labor on his part to bring prominently before Congress in the discharge of his duties under the Constitution the subject-matter about which we are trying now to legislate. It was not a new matter when he first suggested it. It had been discussed on this floor, and enactment had come and been placed upon the statute books of the United States. And, as I shall point out later, whether I have the time to do it orally or under the order of the House, the result of that legislation has been absolutely defective, to put it in the mildest possible form. And, coming suddenly to the Presidency, the present President of the United States, Mr. Roosevelt, sent a message to Congress in December, 1901, and I send to the Clerk's desk an extract from it which I will ask to have read, pointing out to the gentlemen on the other side two things which I beg they will bear in mind. First, that every idea therein contained is in the present measure of the majority, and not a single idea is in the dead and strangled efforts of the minority which lie all along the path of dishonored measures that their own caucus has strangled. [Applause on the Republican side.]

The Clerk read as follows:

> Those who complain of the management of the railways allege that established rates are not maintained; that rebates and similar devices are habitually resorted to; that these preferences are usually in favor of the large shipper; that they drive out of business the smaller competitor; that while many rates are too low, many others are excessive, and that gross preferences are made, affecting both localities and commodities. Upon the other hand, the railways assert that the law by its very terms tends to produce many of these illegal practices by depriving carriers of that right of concerted action which they claim is necessary to establish and maintain nondiscriminating rates.
>
> The act should be amended. The railway is a public servant. Its rates should be just to and open to all shippers alike. The Government should see to it that within its jurisdiction this is so and should provide a speedy, inexpensive, and effective remedy to that end. At the same time it must not be forgotten that our railways are the arteries through which the commercial life blood of this nation flows. Nothing could be more foolish than the enactment of legislation which would unnecessarily interfere with the development and operation of these commercial agencies. The subject is one of great importance and calls for the earnest attention of the Congress.

Mr. GROSVENOR. Following that message of the President, the Congress of the United States, Republican in both branches, passed the so-called Elkins bill, a more formidable weapon in behalf of the extermination of discriminations and other wrong practices than has been suggested by any Democrat on this floor. It passed into law, and it is to-day the foundation stone upon which this legislation is proposed to be based. But I want to go a step further now and read what the President said at Philadelphia for the purpose of pointing out that there is no just claim of the Democratic party here that it is attempting to follow and "toe-mark" the steps of the President. I will read:

> The details must rest with the lawmakers of the two Houses of Congress; but about the principle there can be no doubt. Hasty or vindictive action would merely work damage; but in temperate, resolute fashion, there must be lodged in some tribunal the power over rates, and especially over rebates—whether secured by means of private cars, of private tracks, in the form of damages, or commissions, or in any other manner—which will protect alike the railroad and the shipper, and put the big shipper and the little shipper on an equal footing.

A few days ago, upon the adoption of this rule, I challenged the Democratic party of this House to point in any bill, in all the bills that have been introduced by members of the minority, to a single proposition looking to the curtailment or extermination of the wrongs complained of against private cars, against switching charges, and against discrimination of rates upon two lines of communication.

Mr. SHACKLEFORD. Mr. Chairman, if the gentleman will permit me, I will call his attention to a bill providing for that very identical object—the bill reported by the gentleman from Florida [Mr. LAMAR] and myself, which provided for the regulation of private cars, terminals, and switching facilities.

Mr. GROSVENOR. I am glad that the gentleman has called my attention to that bill.

Mr. SHACKLEFORD. Your Committee on Rules denied us an opportunity to vote for it.

Mr. GROSVENOR. We never denied you an opportunity to vote for it; somebody else denied you a vote on it; a power that controls you by a much stronger force than the majority of this House controls me. Had the caucus of your party agreed to the Lamar bill—or, as perhaps I should call it, the

Hearst bill—it would to-day be here and in order to be voted on instead of the poor thing your caucus adopted when it killed the Hearst-Lamar bill.

Mr. SHACKLEFORD. Then I will say to the gentleman that now that I have his suggestion, I am glad he has spoken about it. There was one bill——

The CHAIRMAN. The gentleman from Ohio declines to yield.

Mr. GROSVENOR. I stood in my place and challenged the gentleman from Mississippi, who had made this statement, to point out one bill that he had introduced, and I put in the Record the numbers of the bills he had introduced, and challenged him to point out one in which there was any reference or element in those bills that could have any effect on private cars or any of these real evils from which the transportation of the country is suffering.

Mr. COCHRAN of Missouri. Will the gentleman allow me——

Mr. GROSVENOR. Now comes the gentleman from Missouri, who has just addressed the House [Mr. SHACKLEFORD]——

The CHAIRMAN. The gentleman from Ohio declines to yield.

Mr. GROSVENOR (continuing). And points out a bill—the bill known as the Hearst bill—that did have provisions against discrimination by private cars and all these evils. Where is that bill now? Dead as Julius Cæsar. Who slaughtered it? The Democratic caucus of this House slaughtered it. That is where that bill is; and now comes the gentleman and says that the majority here would not allow him or his confereres to vote upon a question that he had been refused the right to vote for by his own associates on the floor.

So you see, Mr. Chairman, that this measure—the so-called Esch-Townsend bill, or by whatever name it is called, I care not which—is the child of the Republican majority of this House; it is a child against which every Democratic vote was cast upon the question of the adoption of the rule. It is the child that will be forced upon the Democratic minority to-morrow afternoon about 4 o'clock, and for which, in my judgement, every one of them who is in his seat in the House will vote. I do not indorse every one of the items in this bill; and in the elaboration of my speech I shall point out some of the suggestions that I would have made. But it is enough to say that the promoters of this bill believe and argue, and it seems to me to be satisfactory, that all the evils, that all the complaints of evils, that all the complaints on behalf of my constituency, which is a great railroad-using constituency, are considered and a remedy possibly offered for them in the first section of this bill. I am not sure; I fear I am too hopeful. I shall hope for the best.

I admit that it will take some considerable labor of construction to fit this bill up to the question of switch charges and private cars and discrimination in the distribution of cars, but if it is not satisfactory it is at least a step in the right direction.

I have undertaken to prepare a few words of criticism of the bill myself, in which I have marched up to the question of regulation and practice as used in the bill, and I confess that unless it does mean exactly what its promoters claim for it, then it does not mean anything. Therefore I am hopeful that the bill under fair construction and just construction, will carry the idea that is sought by the speeches on the other side and by the action of this side.

There is a great difference, Mr. Chairman, between making speeches for consumption at home and arguing questions here in the House of Representatives upon questions of law and questions of this character. Therefore, Mr. Chairman, I concede that the gentlemen who have prepared this bill, at the end of great labor and great effort, have proposed a measure that comes fairly up to the requisition of the President, fairly up to the requisitions, and away and distinctly independent of any suggestions that have been made by the official action of the minority of this House. [Loud applause on the Republican side.]

What is the situation in the country? We are told that we are here to frame a bill to fix rates, and the whole cry and popular clamor that has been invoked and stirred up and put in motion by the discussions that have followed the introduction of this topic into the House has been a cry about freight rates. There is no complaint in the country about the rates of freight that I know anything about. There are complaints about other things, which I shall speak of. But the rates of freight in the United States are low, and so low, in comparison with the rates of freight in other countries, that the people of this country would be amazed if they understood how favored they are. It is very true that we have a system of railroads extending from Maine to California, covering a country several times greater than Great Britain, a mighty network of railroads, perhaps more than 200,000 miles in extent.

I present here a comparison recently furnished of freight rates in Great Britain upon its short lines, in comparison with the freight rates in our own country.

	Per ton.
Specimen rates on coal:	
South Wales to London, 162 miles	$1.79
Lancashire to London, 194 miles	2.08
Glen Carbon, Ill., to Chicago, 276 miles	.76
Specimen rates on grain:	
Liverpool to London, 198 miles	4.96
Effingham, Ill., to Chicago, 199 miles	1.79
Specimen rates on agricultural machinery:	
Liverpool to London, 198 miles	5.95
Chicago to Indianapolis, 183 miles	2.30

And it is said that these rates are not maintained, but the Interstate Commerce Commission in its report for 1903, page 10, uses this language:

It is believed that never before in the history of this country have tariff rates been so well or so generally observed as they are at the present time.

Here is a comparison of American railway wages with British railway wages:

The British railways employ 575,834 employees at an average yearly wage of $315. The American railways employ 1,312,537 employees at an average yearly wage of $590.

We are told that our freight rates have been advanced, and here is a statement which seems to come from Mr. Henry C. Adams, statistician of the Interstate Commerce Commission, in which he shows that the revenue per ton per mile in 1903 was 7.63 mills as against 7.24 mills for 1899, and so we have the following demonstration of the increase in the freight rate added to the freight revenues during the former year. I produce the statement of Mr. Adams:

Tons carried one mile.	Average revenue (mills).	Freight revenue.
173,221,278,993, at	7.63	$1,321,678,258
173,221,278,993, at	7.24	1,254,121,959
Difference due to change in rate		67,556,299

That the freight revenue in the above table does not correspond to the amount given in the report for 1903—$1,338,020,026 (p. 80)—is due to the fact, explained to the writer by Mr. Adams, that some of the roads fail to report ton mileage and others fail to report freight revenue, while the average is derived from the returns of those which report both. He assures me that practically the same roads make report of ton mileage and ton revenue from year to year.

If the average revenue per ton-mile were calculated from the aggregate ton mileage and freight revenue as they appear in the reports for 1899 and 1903, the difference due to the change in rates would amount to only $58,029,020, instead of $67,556,299, as in the above table, or $155,475,502, as mischevously paraded by Mr. Bacon.

While this slight increase of freight rates took place—a mere bagatelle in amount—let us see what the increase of wages was. Again I quote from the official report:

This furnishes the following demonstration of the effect of the increase in the rate of wages between the years in question:

Number of employees in 1903, excluding general officers.	Yearly average.	Total compensation.
1,307,695, at	$582.76	$762,077,294
1,307,695, at	551.89	721,703,793
Increase due to increased rate		40,373,501

Here we have more than $40,000,000 of the $50,000,000 increase in freight revenue due to the advance in freight rates absorbed immediately by the coincident advance in the average compensation to labor.

It is impossible to trace how much of the gross revenue of the railways in 1903 was absorbed by the increase in the average cost of materials, supplies, and equipment in the preceding four years. But tween 1899 and 1903 the price of all commodities had advanced 13 per cent (see Bulletin of the Labor Bureau, No. 51), while that of fuel for locomotives had advanced over 40 per cent.

What this meant to the railways is shown in two lines from the reports of 1899 and 1903, as follows:

Fuel for locomotives, 1903	$146,509,031
Fuel for locomotives, 1899	77,187,344
Increase	69,322,687

Estimated that a ton of coal would move as much freight in 1903 as in 1899—improved methods insured its moving more—only 40 per cent, or less than $28,000,000, of this increase was due to increased consumption of fuel by the locomotives, leaving over $41,000,000 of the cost of fuel for locomotives in 1903 as due to the advance in the cost of coal.

With labor and fuel alone costing $81,000,000 more than in 1899, owing to the advance in the rate of wages and the price of coal meantime, nothing further need be said in justification of an advance in freight rates, which at most netted the railways less than $50,000,000 more in 1903 than they would have received under the rates prevailing in 1899.

EXPENSES INCREASE IN 1904.

The necessity for increased revenues thus exhibited in the returns for 1903 was emphasized by the preliminary report of the Commission for

the year ended June 30, 1904. This can be most clearly shown in tabular form, thus:

INCOME.

	1899.	1904.	Per cent.
Gross earnings from operation	$1,313,610,118	$1,966,638,921	49.7
Gross earnings per mile of line	7,005	9,410	34.3

EXPENDITURES.

Total operating expenses	$856,968,999	$1,332,382,948	55.4
Operating expenses per mile of line	4,570	6,375	39.7
Percentage operating expenses to earnings, 1904			67.75
Percentage operating expenses to earnings, 1899			65.24
Increase			2.51

Thus it will be seen that in spite of the enormous increase of nearly 50 per cent in five years in earnings from operation, to which the advance in freight rates contributed only $50,000,000, or less than 4 per cent, operating expenses increased more rapidly still, or 55.4 per cent.

It also appears from the preliminary report of 1904 that while the gross income from passenger service increased $27,861,145, or 5.4 per cent over 1903, the income from the freight service increased only $39,664,950, or less than 3 per cent, and meantime operating expenses increased $74,844,096, or nearly 6 per cent.

Moreover, in 1904 there was an absolute decrease in the net earnings from operation, as shown in the preliminary report, when compared with those given in the preliminary report for 1903, as follows:

Preliminary report, 1903 (201,457 miles)	$641,630,196
Preliminary report, 1904 (209,002 miles)	634,250,873
Decrease in net income	7,379,323

Thus there is shown a decrease of over $7,000,000 in net income from operation, notwithstanding the fact that 99 per cent of the mileage is covered by the report for 1904, against only 98 per cent in 1903.

INCREASE IN TAXES, ETC.

To this net decrease in 1904 must be added the increase in taxes interest on the increased capital at the beginning of the year, represented in 9,626 miles of main and other track constructed, increased equipment (2,646 locomotives and 113,204 cars, passenger and freight), and enormous expenditures on betterments and permanent improvements, without which railway transportation in the United States would be hopelessly inadequate to the rapidly increasing demands of our country. These items may be tabulated as follows:

Decrease in net income from operation	$7,379,323
Increase in taxes (preliminary reports)	3,514,102
Interest on increased capital, 1903, $465,807,294, at 4 per cent	18,632,291
Total	29,525,716

Against this absolute failure of the gross income of 1904 to meet the increased cost of operation, taxes and interest on added capital expenditures, the preliminary report for 1904 shows an increase of $7,707,445 in railway income from miscellaneous sources, chiefly investments in railway securities.

And so we arrive at the fact that the net revenues of the railways in 1904 fell $21,718,271 short of the net revenues of 1903 plus the imperative expenditures for increased taxes and fixed charges.

It is evident from the foregoing that freight rates in America are not excessive; and that, whoever fixes rates, one of two things must come—rates must be readjusted to meet the increased cost of operation, or cost of operation, including wages, must be reduced to keep within the earnings.

If the Government assumes to regulate—that is, reduce—rates it should also assume to reduce expenses, including wages; to curtail improvements—thereby impairing facilities, and to stand ready to make good all deficits and defaults.

What such deficits may mean can be judged from the fact that in 1897, when rates were higher than they are to-day, no dividend was paid on $3,761,092,277 of stock and no interest was paid on $867,950,840 of the funded debt of American railways.

The power to adjust rates to meet varying conditions of traffic and expenses can not be disassociated from responsibility for results. Governments responsible for railway rates are in constant difficulties from their failure to meet the demands of shippers or to meet their financial obligations. Nowhere on earth do they meet both.

Finally, regulating rates will not prevent rebates and other illegal practices. Only an enforcement of the law can do that.

We are met now by a proposition that no man can answer. First, we have the lowest freight rates in the world, lower by a most significant percentage than the freight rates in the nation that ought to be, taking into consideration the character of her roads, the model nation in cheap rates, and we have a discrimination in favor of our own people of a vast sum of money. And it may be well said that we can have no lower freight rates without lower expenditures, and that means lower wages. Are the gentlemen who are agitating the reduction of freight rates, the general sweeping reduction of freight rates, ready to proclaim to the men of the country, the army of railroad workers, that it is the policy of the Congress of the United States to lower their wages, reduce their incomes, modify their style of living, cut down their expenditures for the education of their children and the clothing of their wives and families? Is that the purpose? Let somebody tell me wherein the freight rates, as a whole, in the United States are too high. But the cry goes up "water in the stock," and a gentleman circumscribed by the environments of a country home in a far remote region away from railroads reads entertaining stories in the newspapers and shouts across the halls of Congress, "water in the stock." Does the gentleman suppose that the railroads of 1860 or 1870 can be operated upon the volume of stocks that then existed? The distinguished and able gentleman from Massachusetts [Mr. MCCALL] made a statement in his great speech the other day which I am sure is verified, saying that the great railroads of this country, the railroads that have watered their stocks more than any other railroads of the country, are to-day, upon the new issues of stock, receiving $1.70 and $1.80. This means that the value of the property has been increased, that its earnings have been expended in improvements, and that the physical property has been enhanced enormously in value, and that the so-called "water in the stock" has been issued to meet these tremendous expenditures.

Let any man travel over the great lines of railroad, first in New York and thence to Chicago and Omaha and St. Louis, and then come back by way of Cincinnati and Columbus and Wheeling and keep his eyes open and his judgment clear, and let him look out upon the enormous expenditure that has been made, and this money has gone into circulation in this country and has been expended for labor and the improvement of these roads, and practically the great lines of railroad clear to the Pacific Ocean have been and are being regulated.

Mr. Chairman, what is a railroad company; what is the organization known as a railroad company? We were told the other day by my distinguished colleague from Ohio [Mr. KENNEDY], and we were given some new ideas. I have a copy of his speech at is was delivered, and it is a most remarkable speech. And if it is true, if his ideas of the law of the case are correct, we have learned something that we never knew before. I make a few extracts:

A railroad is not private property, and all analogy between the service of a railroad and the sale of strictly private property fails. A railroad is a public institution, built by the public, owned by the public, and those who under our law control railroads in this country are public trustees owing a duty to the public.

Here is another extract:

It has become apparent in the last few years that the trustees controlling the public railroads have not controlled them solely with an eye single to the interests of the public, but ofttimes their primary consideration has been the furthering of private enterprises and of private gain. Why, a railroad is as much a public institution as is a city. Yet every State in this Union has criminal laws, making it a crime for a city official to become interested in city work, and men who occupy that illogical and impossible position are sent to the penitentiary.

Think of that! Every railroad officer in the United States who is trying to make money for the stockholders of the company ought to be in the penitentiary, because they are not working their railroads "solely" in the interest of the public.

Again:

A railroad company is in no sense private property. It is built by the sovereign power of the State, and the trustees exercising control over that property should be under the supervision and control of the people.

There is something worth having. There is some information for the first time given to the public. "Built by the Government" twice repeated in this brief and eloquent speech. "Built by the Government." It strikes me that in my observation of what was going on in the land I have seen some very hard struggle of locations, cities, towns, and counties to induce capitalists to put up their money to build railroads, and in the gentleman's own State there is a constitutional provision that absolutely prohibits the State legislature on its own behalf or on behalf of the people of the State from contributing one dollar of money to the building of a railroad, and there is not within the geographical lines of the great State of Ohio one foot of railroad built by public money, unless it was before the constitution of 1851.

Why, Mr. Chairman, what have the railroads done for the country? Take the gentleman's own town where he lives, the splendid city of Youngstown. I remember very well when its representatives, able and intelligent men, came to the State legislature of Ohio, of which I was a member, and urged that Youngstown be made the county seat as against the contention of the little village of Canfield, and I remember how earnestly the representatives of that town appealed to us because they had one or more railroads and had a population at that time of about 15,000 people. To-day a network of railroads has invaded the county of Mahoning and centered upon Youngstown and brought enormous wealth and a population of more than 50,000 people to that favored city, and I say that without the population and without the wealth clearly attributable to the railroads that center there, Youngstown to-day would be a little better than Canfield of 1875. Yet this money has been put up by private individuals.

Vast sums of money have been lost in the mutation of conditions, but if there is one great industrial system in the United States greater than any other, and more conducive to the best interest of the people of the United States than any other, it is the railroads of the United States. Vast in their scope, splendid in their construction, intelligent, wise, and wonderful in the magnitude of their purposes.

Are we to strike a blow at these railroads now and cripple them? Is there to be enmity and ill-will and vindictiveness manifested, or are we to legislate intelligently? I believe that there is a wise purpose in the bill before us. I fear it is not all it should have been. That is not strange. Men differ. Men differ widely about principles, and their ideas vary and shift and change.

The real differences of opinion in this country about what ought to be done grew out of the character of legislation touching the construction of the Interstate Commerce Commission. I was a member of the House of Representatives when the discussions of 1885, 1886, and 1887 took place, and I have been amazed, Mr. Chairman, when I have heard it stated on this floor over and over again, not only in this session, but in the last session, that it was the purpose and intention of Congress, when it passed the interstate-commerce law, to confer upon that Commission the power to fix rates. No such thought entered the heads of the men of that day.

Mr. Milton H. Smith, the able president of the Louisville and Nashville Railroad Company, has furnished a brief which I reproduce entire:

MILTON H. SMITH CORRECTS STATEMENT OF SPEAKER CANNON.—THE PRESIDENT OF THE LOUISVILLE AND NASHVILLE RAILROAD CITES SOME RECORDS ON INTERSTATE COMMERCE LEGISLATION.

LOUISVILLE, KY., *February 4, 1905.*

To the Editor of the Courier-Journal:

The following is an extract from a communication from your Washington correspondent, published in to-day's issue, relating to the action of the House of Representatives on the "Esch-Townsend Administration freight-rate bill:"

CANNON'S ULTIMATUM.

"When the Interstate Commerce Commission was created," said the Speaker, 'everybody supposed that it was vested with the powers which are now to be conferred upon it by this bill, and no one called it confiscation.'"

The foregoing erroneous statement is undoubtedly based upon the following extract from the last annual report of the Interstate Commerce Commission, transmitted to Congress December 19, 1904:

"The amendment heretofore and now recommended by the Commission as to authority to prescribe the reasonable rate upon complaint and after hearing would confer in substance the same power thath was actually exercised by the Commission from the date of its organization up to May, 1897, when the United States Supreme Court held that such power was not expressed in the statute."

The statement just quoted is erroneous and known to be such, and has been repeated in numerous official documents and unofficial statements emanating from the Interstate Commerce Commission.

An examination of the debates of the Forty-eighth and Forty-ninth Congresses shows conclusively that Congress did not intend to create, but especially refrained from creating, a commission with power to make rates. The following are a few extracts from the debates:

HOUSE OF REPRESENTATIVES.

December 2, 1884.—Representative Reagan said: "If we were attempting to make regulations—if we were attempting to fix the price of freight, I agree with you a committee might be necessary, but we are trying to do no such thing." (CONGRESSIONAL RECORD, vol. 16, p. 34.)

December 8, 1884.—Mr. Reagan said: "But it would be understood from his reasoning that my bill not only requires rates to be reasonable, but fixes the rates. There is not a word in the bill having that effect." (Vol. 16, p. 112.)

January 7, 1885.—Mr. Reagan said: "One of the greatest troubles I have had, even with the friends of legislation in this direction, has been to get them to understand that this is not a bill to regulate freight rates—that it does not undertake to prescribe rates for the transportation of freight. I know the difficulties which would attend any measure attempting to prescribe rates of freight. I am persuaded that no law fixing rates of freight could be made to work with justice either to the railroads or to the public, and I have intended from the beginning to avoid that difficulty. * * * The difficulty with gentlemen in considering the bill is that they can not keep out of their minds the arguments of the railroad lawyers and lobbyists who are continually harping upon it, that this bill establishes arbitrary rates of freight. It does no such thing." (Vol. 16, p. 600.)

IN THE SENATE.

December 18, 1884.—Senator CULLOM said: "Some may object to this bill because it does not attempt to specifically prohibit pooling and rebates, or because it does not provide for fixing rates. I do not consider these objections well founded." (Vol. 16, p. 354.)

January 14, 1885.—Mr. Slater said: "We do not undertake to fix the price at which freight shall be moved upon any of the roads, but we undertake to say that certain evils which now exist shall cease to exist, and to put upon them the force of statutory prohibition." (Vol. 16, p. 774.)

January 16, 1885.—Mr. Williams said: "We can not say what the rates on the railroads ought to be for freight or for passage money." (Vol. 16, p. 832.)

February 3, 1885.—Mr. Kenna said: "This bill was never designed, I repeat, to fix the rates of the railroads in the management of their business." (Vol. 16, p. 1433.)

FORTY-NINTH CONGRESS—SENATE.

April 22, 1886.—Mr. Miller said: "The bill does not attempt to fix rates. The committee did not believe it was wise for Congress to undertake to do that with its present imperfect knowledge. It did not believe that it was wise to give that power to any commission which might be organized under the bill." (Vol. 17, p. 3875.)

May 6, 1886.—Mr. Kenna said: "What constitutes a reasonable rate is precisely the thing which the people of this country are unwilling to leave to the arbitrary decision of the railroad commission." (Vol. 17, p. 4407.)

May 10, 1886.—Mr. Walthall said: "Does any Senator feel safe in announcing that Congress can confer on any commission the power to regulate the rates of transportation so as to bind the railroad companies?" (Vol. 17, p. 4489.)

May 12, 1886.—Mr. Harris said: "On the contrary, I said it did not propose to fix rates at all." (Vol. 17, p. 4609.)

HOUSE OF REPRESENTATIVES.

July 21, 1886.—Mr. Reagan said: "The Senate bill is formed on the theory of securing a detailed regulation of freight and passenger rates, though it neither fixes any rate nor authorizes the commission to fix rates. In this it seems to be strangely illogical." (Vol. 17, p. 7704.)

IN THE SENATE.

January 11, 1887.—Mr. Camden said: "I beg pardon, the commission is not given the power to fix rates. I contend that Congress can not give to anybody the right to fix rates, but the Commission can decide whether a rate is reasonable or unreasonable." (Vol. 18, p. 564.)

The following is an extract from a decision of the Interstate Commerce Commission in the case of Thatcher *v.* Delaware and Hudson Canal Co. (1 Int. Com. Com. Rep. 152–156), wherein it declined, for lack of evidence, to fix rates, saying:

"It is, therefore, impracticable to fix them in this case, even if the Commission had the power to make rates generally, which it has not. Its power in respect to rates is to determine whether those which the roads impose are for any reason in conflict with the statute."

Shortly after the Commission's organization, in discussing the impracticability of determining in advance for the railroads when they should and when they should not charge more for a short than for a long hual, the Commission, speaking through Judge Cooley, said:

"The Commission would, in effect, be required to act as rate makers for all the roads, and compelled to adjust the tariffs so as to meet the exigencies of business, while at the same time endeavoring to protect relative rights and equities of rival carriers and rival localities. This, in any considerable State, would be an enormous task. In a country so large as ours, and with so vast a mileage of roads, it would be superhuman, and the construction of the statute which would require its performance would render the due administration of the law altogether impracticable, and that fact tends strongly to show that such a construction could not have been intended." (In re L. and N. Co., 1 Int. Com. Com. Rep., 56.)

In many cases where the Interstate Commerce Commission, under the act to regulate commerce, has decided that a rate was unreasonable, the carriers on investigation, if they so found, readjusted the rates. But when the Interstate Commerce Commission undertook to fix rates which the representatives of the carriers deemed unwise, and the question was, under the act, submitted to the courts, the decisions have uniformly been that the act to regulate commerce did not give the Commission power to fix rates.

In decisions of the United States circuit court, as early as 1889 and 1890, the idea was very clearly thrown out that the Commission did not have the rate-making power. (K. and I. B. Co. *v.* L. and N. R. R. Co., 37 Fed. Rep., 567; Int. Com. Com. *v.* B. and O. R. R., 43 Fed. Rep., 37.)

One of the most extensive rate-making orders the Commission attempted was in 1890, when it attempted to prescribe rates on grain from the Missouri River to Chicago, and from Chicago to the Atlantic seaboard. The order was not observed, and the Commission made no attempt to enforce it. This is probably true of numerous other cases where the Commission "assumed to make rates."

In 1891, the Lehigh Valley Railroad Company, in a proceeding against it, distinctly challenged the right of the Commission to make rates.

In January, 1892, the Commission attempted to justify its "assumption" of the rate-making power, and stated "some carriers continue to deny the soundness of this view." (3d I. C. C. Rep., 745.)

The first case in which the Commission attempted to make a rate where the Louisville and Nashville Railroad Company was involved was a case where it ordered a reduction from $1.07 to $1 per hundred pounds in the first-class rate from Cincinnati to Atlanta. Had this order become effective it would have correspondingly reduced rates from all Ohio River points to practically all points in the Southeast. The Commission sought to enforce this order by suit in the United States circuit court early in 1893, and the railroad company promptly denied its right to make rates. The circuit court decided that the rate attempted to be fixed by the Commission was per se unreasonable, and therefore did not pass upon the question of power. That decision was affirmed by the circuit court of appeals, and in March, 1896, the latter court's decision was affirmed by the Supreme Court, which then distinctly held that the Commission had no power to make rates. (I. C. C. *v.* C., N. O. & T. P. Rwy. et al., 162 U. S., 184.)

The maximum-rate case in May, 1897, simply followed the earlier Supreme Court case of 1896. (See I. C. C. *v.* C., N. O. & T. P. Rwy., 167–479.)

Does not the foregoing conclusively show:

First. That the act to regulate commerce was not intended to give to the Commission the power to fix rates?

Second. That the act does not give the Commisson power to fix rates?

Third. That the courts have uniformly decided that the Commission was not empowered to fix rates?

And, finally, does it not show to be erroneous the alleged statement of Speaker Cannon that "when the Interstate Commerce Commission was created everybody supposed that it was vested with powers" to fix rates?

MILTON H. SMITH.

Will not somebody who honestly believes that it was the purpose and intention to give to the Commission the power to fix rates, and that it did not usurp the power, and that the purpose of the law was being carried out until the ruthless finding of the Supreme Court put an end to it, read these extracts from the discussions of that day and see where he can find lodgment for even the foot of a dove? Who believes that it was the intention of Congress to confer this power upon the Interstate Commerce Commission? Instead of it being the purpose of Congress to confer this enormous and, in my judgment, unconstitutional power upon the Interstate Commerce Commission of 1887, it

was the distinct purpose of Congress to do no such thing, and the attempt to do it was an aggressive usurpation which was put an end to by the Supreme Court. Bitter as the feeling was against the railroads growing out of the great Populistic and Granger movements of that day, it would have been utterly impossible to have passed in either branch of Congress a bill to confer rate-making power upon the Interstate Commerce Commission.

Mr. Chairman, is it possible that the Congress of the United States is about to seize $12,000,000,000 worth of property being to-day handled and managed to the tremendous advantage of the people of the United States in an intelligent and far-reaching system that contemplates constant improvement in the interest of the public, and take the real management of that property out of the hands of the owners and confer it upon a political body shifting as the sands of the sea, subject to the whims and caprices of the political power of the particular time in control of the Government, oust its owners from its control and turn it over in this way? Is that the purpose, and is that possible?

Mr. Chairman, I hope that this view of this bill is an exaggerated one. I hope that this construction which is being put upon it by many is an exaggerated construction and one that is not necessary, and one that the public will understand is an exaggerated one. But, in fact, do not its provisions come to that? Is it not a fact that when you take from the farmer the right to fix the price upon his farm product that you have taken his property from him? Is it not a fact that when you take from the manufacturer the power to fix the price of his commodities that you have in point of fact seized his property and stripped him of his property? Can there be any doubt about that? What does it add that he holds the nominal possession while the only element of real importance in the whole business, the income from it, is to be regulated by somebody else?

Mr. Chairman, there are wrongs and outrages connected with the subject of railroad management in the United States, and Congress has the power to make an effort to see that that effort is effective to remedy these wrongs. The railroads are public carriers. They receive certain rights and powers from the State governments. Keep that in your mind, Mr. Chairman. The right of eminent domain does not come from Congress, it comes from the States, and in consideration of that fact the railroad is amenable under certain proper limitations and conditions to the laws of the country, and as a common carrier assumes certain obligations, and as a common carrier is bound by certain limitations and restrictions, and Congress is bound as matters stand to see to it that the public is fairly treated. All this I grant you. But these propositions elaborated as far as any fair-minded lawyer will elaborate them do not go to the extent of seizing the property and constituting the United States Government a receiver and placing the United States Government in the attitude of managing and directing the property and ousting and eliminating the owner. Correcting abuses is one thing; seizing property and appointing the Government a receiver and administrator is quite another thing. And I say, disguise it as you will and fix it as you may, the turning over to anybody or any organization or any authority other than the owners themselves the custody and the management of property is a deprivation of the owner of his right of property without due compensation.

What is there about a railroad corporation that differentiates it from an ordinary corporation chartered by a State? I am not unmindful of the fact that the very last proposition in regard to all corporations is to place them, and thereby the entire business of the whole country, under the domination and control of the Federal Government. I am not unmindful of the strides that have been made in the direction of universal control of all property and all property rights by the general Government. I am not indifferent to the proposition to force all corporations to come under one sweeping Federal statute ousting the State governments from all control of the instrumentalities of the business in the States. I am not indifferent to the proposition thus suggested which involves of necessity the practical abolition of State lines and State independence and State autonomy for all practical business purposes. I am not unaware of the natural and necessary result of that sort of legislation, the logical and inevitable results of that sort of policy, to wit, the placing of all the business interests of the country in the hands of the Federal Government.

The next step will be to control the coal mines. It has already been suggested by a great leader of a great political party. And next, the fixing of the price of labor. Why not? If the general Government can fix the price of railroad transportation, why not the price of labor, which is a necessary incident of railroad transportation? If it is just and right and intelligent to fix the price upon which a train load of freight shall be carried from New York to San Francisco, why, as an incident of that power, is it not just to fix the price of the hired men who are necessarily required to handle that freight? These are questions which will arise as we go forward toward socialism. We are well on the way. It is so convenient, so desirable to create a commission, create a bureau, create a department, and seize upon the instrumentalities of industry and turn them over to the domination of gentlemen high up in academic study.

There is another phase of this business, and I regret that, notwithstanding I have listened with intense interest and with just appreciation to the able speeches that have been made for and against this bill, I have heard not one word upon this phase of the subject. A long time ago, in the earlier and possibly better days of the Republic, it was imagined by men high in public affairs that the State governments, through their legislative action, had certain powers in regard to railroads and railroad transportation, and they have an impression that the railroad companies were under the domination of the State governments, and that as to a vast number of questions arising in the administration of railroads affairs the State governments ought to have something to say. As a consequence, all over the United States laws have been put into force by State governments, and State legislatures have had the temerity to even fix rates, to prescribe a large volume almost of regulations of the railroad companies, and among the rest they have fixed the maximum fares of passengers, and they have laws, not only the common law but State laws, regulating the distribution of cars to the producers. What is to become of them? What will become of the scheme of the Wisconsin gentlemen who just now are contriving a plan to take possession in substance and effect of all the railroads of Wisconsin and fix rates and make time tables and do everything that the superintendent and directors of a railroad company do in the management of their property? What is to become of that effort? Why, Mr. Chairman, the evils, the gross outrages of railroad companies, and there are plenty of them, consist almost exclusively in discriminations against producers.

In Ohio to-day we have ample remedy in the courts. I was connected with a suit against a railroad company because it discriminated in favor of certain producers of coal and against certain other producers of coal, and it was a clear, straightforward remedy. We had no trouble about it except to get the money after we had recovered it. What is to become of those rights? Are we to have two jurisdictions, one fixing one set of rates and another another set of rates? Are we to have a power in the State of Ohio that can fix a rate upon freights from Ashtabula to the Indiana line and yet can not touch interstate commerce rates? How is this thing to be adjusted? Are the States to be eliminated? "But," you say, "to-day the States have no power to regulate interstate commerce." Do not be too sure of that. So long as the General Government omits to interfere in these matters, it is not sure that the State may not. The general Government has exclusive jurisdiction of navigable rivers and yet the Supreme Court of the United States in an important case held that where the General Government did not take possession of the river and did not legislate for the construction of locks and dams and the State did, that the right of the State and the right of the agencies of the State were absolutely proper, and that even the franchise became of such value after the United States took possession of the whole river that it could not destroy that franchise without paying for it in money. Apply this principle now and you have a vast number of these questions that the General Government has not after all seen fit to legislate about and the State governments have and the State commissions are in full force undertaking to fix rates and manage the whole system of railroads within their State, and State laws, many of them wise and many of them unwise, have been passed and enforced and the systems of State control and management are in full force and operation. What is to be done about that with reference to collision between the authority of the States and the General Government? Which is to back down? And if the State governments are no longer to have anything to say upon these important topics why would it not be just as well to abolish the State governments, and if we are to turn them over to the control of the General Government, why not make the thing universal?

The real railroad outrages to-day, and there are plenty of them, can be named and described under the one term "rebate," whether it is the carrying of a carload of freight from point "A" to point "B" for shipper No. 1 at $50 a carload and for shipper No. 2 at $40, or whether it be the excessive allowance for switching charges, or whether it be the division of freight upon a short line of railroad tributary to a great line of railroad, or whether it be the use of private cars owned by the shippers. These are the wrongs and injuries that need regulation and need it badly

and need it now. The President is absolutely right when he singles out these things as the real things, and our friends are absolutely wrong when they single out the rates of freight.

I wish this bill more specifically conferred the power to regulate these wrongs somewhere, a tribunal in every State which would authorize a shipper wronged by one of these discriminations to bring his suit to-day and force a trial of it within sixty days would be a far better scheme than this scheme by commission. If there is one thing in the United States that the intelligent people thereof are becoming tired of it is this commission business. They move slowly and on zigzag lines and they are unsatisfactory in results. There should be machinery attached to the Elkins law that would make it impossible for these discriminations to stand.

Why, Mr. Chairman, in the State of Ohio very recently a great north and south railroad line refused to attach the switch of a coal producer to its main track, and claimed that it had coal enough contracted for all its carrying possibilities. This coal was interstate-commerce coal, mined for interstate-commerce purposes, sold for interstate-commerce purposes, coming clearly within the scope and purview of the Addyston pipe case. A suit was brought in the State court to oust that railroad company of its charter and put it into the hands of a receiver, because it did not do its duty by its patrons and because it discriminated in favor of the few. There was no statute on that topic in Ohio. There was the common-law remedy. The suit was brought and it was hotly contested, until the railroad company, upon the hearing of motions and demurrers preliminary to the great struggle that was to come upon the question of fact, saw the handwriting on the wall and yielded and took on the switch. What is to become of a remedy like that? Are we to be driven to a political commission and then to a court, and so on?

But, Mr. Chairman, I shall vote for this bill. I shall vote for it with the hope that it will do what I fear it can not do. I shall vote for it with the hope that it will remedy these minor evils and outrages. I do not believe that any system of legislation is capable to devise a scheme of fairness emanating from one great central source of power and spreading itself out over this tremendous railroad system of the United States, but if it can be done and can be done satisfactorily, then we have secured by indirection what the railroads were forbidden to have by direction. We will have a great national pooling law that will pool the interests of the railroads. You say this differs from the pooling proposition. There the money arising was to be all put into a common fund and distributed. Grant that is so. Here you say it is only to fix rates. But those rates are to be so uniform, so fair, so just that all the railroads are to fare alike. Is not that pooling? What was the object of the pooling scheme? It was that each railroad should have its fair share of the business and each railroad should have a fair share of the income. If this bill purports anything and can accomplish anything it will accomplish that and nothing more.

We must do nothing to impair the efficiency of the railroad service of the United States. We ought to do nothing that will curtail and discourage competition. This bill will go far to destroy all competition.

And now comes the pertinent question. I am asked, "If all this be true, why do you vote for the bill? I voted for the bill to repeal the canteen law. I believed at the time that it was an unwise vote. I know it now. I did it because there was such a public clamor that the people would take nothing less. The Populistic idea that the people should own the railroads and that private ownership in a railroad is a myth is being fostered and promoted in this country to an extent that is astonishing, and the people have been taught to believe that the railroad management of the country is in enmity to their interests, and after a long study of this subject by the able committee that produced this bill I am not willing to put my own judgment up against the judgment of that committee when the action of that committee seems to be demanded by such a popular clamor in the country. I do not stop to discuss how that clamor arose. I do not stop to discuss that during the mighty campaign of 1904 I never heard the subject broached. I do not stop to discuss the phenomena of this popular uprising, but I bow to the apparent demand that something must be done, and I am trying to do the best I can.

As a lover of my country and as a friend of the common people, I pray that good may come from the passage of this bill. If it does, the men who have projected it shall have the honor. If it does not and evil results, they shall have the assurance, so far as my voice goes, that they have honestly done the best they could.

Mr. HEPBURN. I move that the committee do now rise.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. CURRIER, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had under consideration the bill H. R. 18588, and had come to no resolution thereon.

COUNTING THE ELECTORAL VOTE.

The SPEAKER. Under the law the Senate are required to be seated at the right of the presiding officer. If Members occupying the first four rows to the right will be kind enough to vacate their seats, the law will be complied with.

At 1 o'clock the Doorkeeper announced the President pro tempore and the Senate of the United States.

The Senate entered the Hall, preceded by their Sergeant-at-Arms, and headed by their President pro tempore and the Secretary of the Senate, the Members and officers of the House rising to receive them.

The President pro tempore of the Senate took his seat as presiding officer of the joint convention of the two Houses, the Speaker of the House occupying the chair on his left.

The PRESIDENT pro tempore of the Senate. The two Houses of Congress, pursuant to the requirements of the Constitution and laws of the United States, are now in joint convention for the purpose of opening the certificates and counting the votes of the several States for President and Vice-President. Under well-established precedents, unless demand shall be made in any case, the reading of the formal portions of the certificates will be dispensed with. After ascertainment has been had that the certificates are authentic and correct in form, the tellers will count and make a list of the votes of the States. If there be no objection, the Presiding Officer will now open the certificate of the State of Alabama. Will the tellers please take their places at the desk?

Senators BURROWS and BAILEY, the tellers appointed on the part of the Senate, and Representatives GAINES of West Virginia and RUSSELL, the tellers appointed on the part of the House, took their places at the Clerk's desk.

The PRESIDENT pro tempore of the Senate. The tellers will count and make a list of the vote of the State of Alabama.

Mr. BURROWS (one of the tellers). Mr. President, the certificate of the electoral vote of the State of Alabama seems to be regular in form and authentic, and it appears therefrom that Alton B. Parker, of the State of New York, received 11 votes for President, and that Henry G. Davis, of West Virginia, received 11 votes for Vice-President.

The PRESIDENT pro tempore of the Senate. If there be no objection, the Chair will now open and pass to the tellers the certificate showing the vote of the State of Arkansas, and the tellers will count and make a list of the votes of that State.

Mr. COCKRELL. Mr. President, as there is no possible contest, I hope, in order to save time, that the result in each State will be announced without reading the certificate.

The tellers then proceeded to announce the electoral votes of the several States, in their alphabetical order.

The PRESIDENT pro tempore of the Senate. Gentlemen of the Convention, the certificates of all the States have now been opened and read, and the tellers will make final ascertainment of the result and report the same to the President pro tempore of the Senate.

Mr. BURROWS (one of the tellers). Mr. President, the tellers report the result of the ascertainment of the count of the electoral vote as follows:

The whole number of the electors appointed to vote for President of the United States is 476, of which a majority is 239.

Theodore Roosevelt, of the State of New York, has received, for President of the United States, 336 votes;

Alton Brooks Parker, of the State of New York, has received 140 votes.

The state of the vote for Vice-President of the United States, as delivered to the President of the Senate, is as follows:

The whole number of the electors appointed to vote for Vice-President of the United States is 476, of which a majority is 239.

Charles Warren Fairbanks, of the State of Indiana, has received 336 votes;

Henry Gassaway Davis, of the State of West Virginia, has received 140 votes.

This announcement of the state of the vote by the President of the Senate shall be deemed a sufficient declaration of the persons elected President and Vice-President of the United States, each for the term beginning March 4, 1905, and shall be entered, together with a list of the votes, on the Journals of the Senate and House of Representatives.

The report of the tellers is as follows:

The undersigned, JULIUS C. BURROWS and JOSEPH WELDON BAILEY, tellers on the part of the Senate, and JOSEPH H. GAINES and GORDON RUSSELL, tellers on the part of the House of Representatives, report the following as the result of the ascertain-

ment and counting of the electoral vote for President and Vice-President of the United States for the term beginning March 4, 1905:

State.	Number of electoral votes to which each State is entitled.	For President.		For Vice-President.	
		Theodore Roosevelt, of New York.	Alton Brooks Parker, of New York.	Charles Warren Fairbanks, of Indiana.	Henry Gassaway Davis, of West Virginia.
Alabama	11		11		11
Arkansas	9		9		9
California	10	10		10	
Colorado	5	5		5	
Connecticut	7	7		7	
Delaware	3	3		3	
Florida	5		5		5
Georgia	13		13		13
Idaho	3	3		3	
Illinois	27	27		27	
Indiana	15	15		15	
Iowa	13	13		13	
Kansas	10	10		10	
Kentucky	13		13		13
Louisiana	9		9		9
Maine	6	6		6	
Maryland	8	1	7	1	7
Massachusetts	16	16		16	
Michigan	14	14		14	
Minnesota	11	11		11	
Mississippi	10		10		10
Missouri	18	18		18	
Montana	3	3		3	
Nebraska	8	8		8	
Nevada	3	3		3	
New Hampshire	4	4		4	
New Jersey	12	12		12	
New York	39	39		39	
North Carolina	12		12		12
North Dakota	4	4		4	
Ohio	23	23		23	
Oregon	4	4		4	
Pennsylvania	34	34		34	
Rhode Island	4	4		4	
South Carolina	9		9		9
South Dakota	4	4		4	
Tennessee	12		12		12
Texas	18		18		18
Utah	3	3		3	
Vermont	4	4		4	
Virginia	12		12		12
Washington	5	5		5	
West Virginia	7	7		7	
Wisconsin	13	13		13	
Wyoming	3	3		3	
Total	476	336	140	336	140

J. C. BURROWS,
J. W. BAILEY,
Tellers on the part of the Senate.
JOSEPH H. GAINES,
GORDON RUSSELL,
Tellers on the part of the House of Representatives.

The PRESIDENT pro tempore of the Senate. The report of the state of the vote for President of the United States, as delivered to the President of the Senate, is as follows:

The whole number of the electors appointed to vote for President of the United States is 476, of which a majority is 239.

Theodore Roosevelt, of the State of New York, has received for President of the United States 336 votes;

Alton Brooks Parker, of the State of New York, has received 140 votes.

The state of the vote for Vice-President of the United States, as delivered to the President of the Senate, is as follows:

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This announcement of the state of the vote by the President of the Senate shall be deemed a sufficient declaration of the persons elected President and Vice-President of the United States, each for the term beginning March 4, 1905, and shall be entered, together with a list of the votes, on the Journals of the Senate and House of Representatives. [Applause.]

Gentlemen of the convention, the purposes for which this joint convention has been called having been accomplished, the Presiding Officer dissolves the joint convention, and the Senate will return to their Chamber.

The Senate retired from the Hall (at 1 o'clock and 50 minutes p. m.), the Speaker resumed the chair, and the House was again called to order.

RAILROAD-RATE BILL.

The SPEAKER. The House will be in order. Under the order of the House, the Chair declares the House to be in Committee of the Whole House on the state of the Union, and the gentleman from New Hampshire [Mr. CURRIER] will take the chair.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 18588, the railroad-rate bill.

Mr. DAVEY of Louisiana. Mr. Chairman, I now yield ten minutes to the gentleman from Alabama [Mr. UNDERWOOD].

Mr. UNDERWOOD. Mr. Chairman, transportation is the key that unlocks the gate of commerce. We are a great commercial nation. The prosperity and happiness of our people is inseparably bound to our commercial success. Our Republic stretches across mountain and plain, over 3,000 miles, from ocean to ocean. Great distances must often be traversed in order that the products of the farm and the factory may reach our home markets. This makes transportation by rail and by water as necessary to our commercial life as the air is to sustain our existence. In the olden days, before the time of the steamboat and the locomotive, on account of the great cost of transportation, inland communities were limited in the scope of their commercial transactions to a very narrow territory; but with the coming of railroads our people were enabled to expand their business so that they could cover the whole continent. To-day the cost of transportation from the point of production to the home market often exceeds the profits of the producer. It is readily seen, therefore, if one producer has an advantage in freight rates or water transportation over another that he can control the market in which he seeks to sell his products, by underselling his competitor to the extent of the reduced freight rate that he pays to that particular market. Of course the geographical location of the shipper is a natural advantage that he is entitled to possess, but we all, in common fairness, agree that he is not entitled to an artificial advantage given by law to a particular community or enterprise that builds up one individual or community at the expense of another.

For this reason a number of years ago Congress established what is known as the "Interstate Commerce Commission" in order that the Government might supervise the rates of transportation and see that all communities were treated equitably and fairly in the transportation of their goods. For many years after the Interstate Commerce Commission was established the Commission exercised the power, not only to determine what was a reasonable rate to be charged for transportation, but also the power to fix a reasonable rate where they had declared one in existence to be discriminating unfairly against one community or individual in favor of another. In 1897 the Supreme Court of the United States decided that, although the original law establishing the Commission authorized it to state when a rate was inequitable and unjust, it did not give it the power to fix a new rate. Ever since that time the Commission has petitioned Congress to enact new legislation giving it the power it formerly exercised. No question is ever settled finally until it is settled right, and no question can ever be settled right unless it deals justly and fairly with all parties concerned. The railroads of the United States have been built by private capital. The people who invested their money in railroad stocks and bonds are entitled to a fair and reasonable return on the money invested just as much as the owner of the farm or the foundry or factory is entitled to make a reasonable profit on his investment. Any law that is passed that would take away the opportunity to make a fair profit on capital invested in the great transportation companies of the United States would be unjust.

On the other hand, each community in the United States is entitled to a fair and equal chance to compete for the home and foreign markets with every other community, and any establishment of freight rates that discriminates in favor of one locality as against the other, giving particular advantages to one and depriving the other of the same opportunities of a successful transaction of their business, is equally unjust. As long as human nature remains as it is, it is natural that the individual will strive to monopolize trade at the expense of his competitor, and transportation companies will endeavor to make the greatest profits possible without always looking to the equal rights of all shippers. Therefore it is a practical impossibility for the shipper and the carrier alone to always determine and arrange freight rates that will be equitable and just to all. For these reasons the Government established an Interstate Commerce Commission, which is expected to be a fair tribunal, to decide this great question in a judicial manner as between the contending parties, just as the courts of the land decide all questions in dispute between the citizens of the Republic. But the decision of no court could be made effective unless it had

power to enforce its decrees, and the decisions of an Interstate Commerce Commission would be of no value to the people or the transportation companies unless those decisions can be made effective. It is therefore necessary at this time for Congress to legislate in reference to carriers of freight and passengers.

Under the Constitution of the United States, the Government of the United States, as distinguished from the State governments, is given the power to regulate commerce with foreign nations and among the several States, and with the Indian tribes. The object of putting this clause in the Constitution was clearly to prevent one State from discriminating against the commerce of another State. There is no clause of the Constitution that brings the people of the United States in closer touch with each other and binds the several States more firmly into an indissoluble union than this power that is intended to allow the Federal Government to see that the people of all the States are given a fair and equal opportunity to trade with each other and develop their commerce along natural lines. At the time of the making of the Constitution the great railroads of the country were unknown and undreamed of. A new condition has arisen. The States as a rule, since the adoption of the Constitution, have not attempted by State laws or otherwise to discriminate against the commerce of their sister States. But now that we have the railroads that carry the commerce from one State to another, stretching for thousands of miles across the continent, through many different States, and controlled by a few men, unless this power in the Constitution given to the Federal Government is applied to the regulation of these great transportation companies and they are prevented from adopting freight rates that discriminate in favor of particular individuals, corporations, or communities as against others, then the constitutional requirement that was intended to prevent unjust discrimination in commerce would practically be destroyed. So that Congress unquestionably has the power to see that unjust discriminating transportation charges are not made by these great companies, and that all the citizens of the United States are given a fair and equal chance to develop their business and a fair opportunity to compete with all others on an equal basis.

But by some it is contended that the exercise of this power is an attempt to control and regulate private business and to shackle the expansion of the country along natural lines. This argument might have some basis to stand on if the great transportation companies of the United States owed no public duty, but they do not stand on the same basis that the ordinary business of the country rests upon. Special privileges have been granted to the railroad companies of the United States in their charters by which they are allowed to condemn and take private proporty, after paying a just compensation therefor, in order that they may have rights of way and terminal facilities for the operation of their roads. The persons whose capital is invested in the road are given the special privilege of controlling the freight and commerce that is tributary to that road to the exclusion of other citizens.

The consideration that moves the granting of these special advantages is the obligation that rests on the transportation company to perform a public duty, and that is to carry the freight and passenger traffic of the people at a reasonable rate from one community to another. Therefore, although the stockholders and bondholders have a just right to demand that they be allowed to make a sufficient profit to maintain their company and at the same time make a fair and reasonable profit for their stockholders, yet the people of the United States have an equal right to demand that the freight and passengers shall be carried at a reasonable compensation after allowing the railroad what is just for maintenance and profits, and also that the great power of fixing rates of transportation shall not be used so as to discriminate unjustly between communities and individuals. It should therefore be the effort of Congress in enacting its legislation to supervise the business of the transportation companies so as to see that they perform fairly and justly the duty they owe to the citizens of the United States.

The bill now pending before the House, H. R. 18588, known as the "railroad-rate bill," is intended to give to the Interstate Commerce Commission that power which it exercised before the decision of the Supreme Court of the United States in 1897, to declare what is a reasonable rate as well as to declare what is an unreasonable rate. The power-giving clause of this bill reads as follows:

That whenever, upon complaint duly made under section 13 of the act to regulate commerce, the Interstate Commerce Commission shall, after full hearing, make any finding or ruling declaring any existing rate for the transportation of persons or property, or any regulation or practice whatever affecting the transportation of persons or of property, to be unreasonable or unjustly discriminatory, the Commission shall have power and it shall be its duty to declare and order what shall be a just and reasonable rate, practice, or regulation to be charged, imposed, or followed in the future in place of that found to be unreasonable or unjustly discriminatory, and the order of the Commission shall of its own force take effect and become operative thirty days after notice thereof has been given to the person or persons directly affected thereby. But at any time within sixty days from the date of such notice any person or persons directly affected by the order of the Commission, and deeming it to be contrary to law, may institute proceedings in the court of transportation, sitting as a court of equity, and have it reviewed and its lawfulness, justness, and reasonableness inquired into and determined.

This is the first section of the bill. The other twenty-one sections of the bill describe the manner in which the power given the Commission by this section shall be exercised and enforced. It provides that two additional Commissioners shall be appointed; that the salaries of all the Commissioners shall be increased from $7,500 a year to $10,000 a year, and that a new court, known as the "court of transportation," shall be established, with five judges, who shall have entire jurisdiction of all appeals arising from the decisions of the Interstate Commerce Commission. And then it provides for the penalties that shall be imposed for a violation of the orders of the court or the Interstate Commerce Commission.

As far as the bill goes it is an improvement on the present law. It does not give the Commission power to initiate the making of freight rates or interfere with the railroads in the transaction of their business so long as they conduct their business fairly and justly to all persons interested. But where it is found that discriminating rates have been given and injustice done to individuals or communities, the Commission is given the power to set aside such unjust rates and declare reasonable and just rates in place thereof. It does not seem to me that this is drastic legislation nor that which unjustly interferes with the conduct of private enterprises. It seems to me that the bill, as far as it goes, only seeks to see that equal and exact justice is done between the carrier of freight and the shipper.

I shall vote for the bill for this reason, but I am not entirely satisfied with its terms, because I believe when we are enacting legislation of this kind we should endeavor to cover the whole scope of the question before the House and not leave important matters untouched to be covered by future legislation. Some time ago Congress enacted a law that prohibited railroads from allowing rebates to persons who shipped freight over their roads. The railroads established regular rates for the transportation of freight, but before this law was enacted some large shippers demanded and received from the railroads a return of a portion of the freight paid. This was known as rebates.

It can easily be seen that where one shipper had a part of the freight rate returned to him and the other shipper was compelled to pay the entire freight rate the one having the rebate or getting the benefit of the returned freight charges had a great advantage in the market over his competitors, and in this way was enabled to undersell him and control the business. It was through the railroads granting rebates that the great monopoly of the Standard Oil Company was built and the small competitors engaged in the shipment of oil were driven from the market and destroyed. Now, I do not suppose that anyone will contend that this was not an unjust or unfair use of the power to make and fix freight rates, and all will agree that the law enacted that prohibited the granting of rebates is a just and fair one. As a matter of fact, the probabilities are that the transportation companies themselves do not desire to grant these rebates, but large shippers, such as the Standard Oil Company, were enabled to threaten railroad managers with withdrawing their entire business from their roads and ship their products by competing lines if the rebates were not granted to them as against other competitive shippers. But it has been decided that the law that prohibits the granting of rebates does not apply to private cars. And therefore the Interstate Commerce Commission had no power to regulate rates given to or the transportation of cars owned by other persons than the railroad companies. Now, the Standard Oil Company has its great oil tank cars, belonging to that company and not to the railroads, in which it ships its oil throughout the United States.

The American Packing Company, known as the "beef trust," owns its refrigerating cars in which it ships beef from the slaughterhouses to the distributing markets. The railroads can no longer, under the present law, give these two great corporations rebates over other competitors in the carrying of freight, but as private cars are not regulated by the present law they can allow them any amount of rental for the cars that they see fit. In other words, the Standard Oil Company pays the railroad companies the regular rate for transporting its oil, and then the railroad company turns around and pays it a rental for the use of the car belonging to it. This rental could be at a rate that would not give the oil company a discriminatory advantage over its competitors, or this rental can be placed so high that it gives them a distinct advantage in shipping. In other words, it gives them a rebate in a different way from the

old method. As a matter of fact, I understand that before the law prohibiting rebates was passed no rental whatever was demanded from the railroads by these great companies for the hauling of their private cars, but since the law has been passed prohibiting rebates rentals take the place of rebates they are prohibited by law from receiving.

Again, the law intended to prevent unjust discriminations is evaded by private terminal tracks. In other words, a great monopolistic corporation may own, and in many instances does own, 10 or 15 miles of terminal track around its plant. Heretofore these terminal tracks have belonged to the original corporation, but since the law prohibiting rebates was enacted many of these great corporations have sold these terminal tracks to railroad companies that they incorporated and are controlled and owned by them. Now, when a car of freight is shipped over a number of railroads the rate is fixed, and these railroads agree among themselves how the freight charges on the car shall be apportioned to the several railroad companies. The monopoly owning its own private tracks, converted into a terminal railroad company, says to the railroad lines over which the freight is to be shipped: "You must allow us a proportion of the freight rate as our share for hauling it over our terminal tracks on our railroad." This can be little or great, as determined on by the various railroads, including the terminal railroad that belongs to the monopolistic corporation.

In the same way that the railroads were forced to grant rebates they are now compelled to allow a high rate of freight for the few miles that the car is hauled over the terminal tracks of the railroad that belongs to the monopoly, and this freight, in the end, goes into the pockets of the monopolistic corporation and enables it to reach the competing market at a less freight rate, and undersell his competitor and drive him out of business. Now, the bill that we are considering does not change the law or in any way regulate private cars or private terminal tracks. It is contended by those who framed the bill before the House that under a construction of the language used in section 1, which I have read, that it can be construed by the courts to apply to private cars and private terminal tracks. I do not believe the language warrants such a construction; but why leave it in doubt, if it is honestly intended to control these monopolies? Why not use language that there can be no doubt about, and clearly make them subject to Government control?

On the other hand, the bill under consideration expressly provides that the various railroads making up the line over which freight is shipped, after the Interstate Commerce Commission has fixed a rate, can agree among themselves upon the apportionment thereof, and if they agree the Commission will have nothing to do with the apportionment of the rate. So it is readily seen that among small shippers the present bill, when enacted into law, may bring about justice and equality in the shipment of freight and the establishment of rates, but when it comes to the great monopolies of this country, such as the Standard Oil Company and the beef trust, they are enabled to go right around the law, receive unjust and discriminatory freight rates or allowances in their favor, by which they are enabled to crush out competition and build up their monopolies, and it is for this reason that I say that I am not satisfied with the bill that is presented to the House. I think we should cover all of these questions and that it should be broad enough to allow the Interstate Commerce Commission to regulate the private cars and private terminal tracks.

Under the rule for the consideration of this bill that has been adopted by the Republican management of the House, we are prohibited from amending the bill in these particulars. We are required to vote either for or against the bill, but are not allowed to perfect it, and, as I say, believing that the bill as it now stands is better than no law at all, I shall vote for it. But I think the position of the Republican majority in this House in presenting a bill not fully covering the question, and leaving loopholes in the law that enable monopolies to continue their unjust practices should be condemned, and the country should understand that the Republican majority in this House is not fully and fairly legislating on this question. The bill has yet to go to the Senate of the United States, and although the Democratic minority in the House is bound and gagged, so far as its ability to offer an amendment on these questions is concerned, we may yet hope that the necessary amendments may be added to it in the Senate, and that in the end we may secure legislation broad enough and just enough to protect the people against monopolies and trusts as well as railroad discriminations in freight rates. [Loud applause.]

Mr. DAVEY of Louisiana. Mr. Chairman, I now yield to the gentleman from New York [Mr. SCUDDER].

Mr. SCUDDER. Mr. Chairman, the effect of this bill, if enacted into law, provided it withstands the scrutiny of the courts, will be to transfer to the Interstate Commerce Commission the power to fix railroad rates and charges, to determine the earning limit of capital invested in transportation enterprises, to control the channels of trade and commerce, to deflect trade from its natural channels, to direct it to arbitrarily created channels, to make and unmake communities, to set at naught the laws of nature governing trade, to stifle enterprise, and eliminate competition—powers too vast, too dangerous, to be yielded to and to be wielded by a partisan political Government. The railroads are largely responsible for the conditions of which the people complain; they are largely responsible for the present clamor for legislation of a radical nature.

But, Mr. Chairman, we, as a people, are too prone to think that everything can be accomplished by legislation, that a cure for all ills can be found in legislation. The evils under which the country has grown restive are not particular to this country; they are evils that are inevitably attendant upon rapid growth and development. In different degrees they have been experienced by all nations that have gone before; only to a more marked degree do they exasperate us because in population, in wealth, in commerce, our development has outstripped in a given time, all that has gone before. It follows that these evils have crowded upon us more rapidly, more concentratedly, but I do not think more weightedly, than ever was the case before in other lands.

This growth of ours as a nation, as a commercial force, has, as a natural incident, the agencies which have sprung up to carry it on. These agencies may abuse their powers; they may work hardship in places; they unquestionably do cause the resentment of those upon whom the burdens more heavily fall; but before we decide to depart from the spirit, to overturn the form of the institutions under which we have acquired our growth, is it not the part of wisdom to wait and see whether, as we reach another stage of our development, these very ills may not disappear by the force of the natural laws which has brought them into existence?

How much of this clamor for legislation to meet these evils, which to me seem but temporary, is real and how much is manufactured? Are present conditions as bad as depicted by those who favor this legislation? Can it be said they have reached a stage where no longer they can be borne? Have they not been exaggerated? Irrespective of what law may provide, hardships must be suffered; this is the inscrutable law of nature. If overtaken by severe illness, we call a consultation of physicians, specialists, wise men, to diagnose our case and prescribe treatment. We have recourse to desperate experiments only as a last resource. As a people have we reached or even approached the desperate stage? There is time for deliberation; the hour of amputation has not arrived. The symptoms have not been diagnosed. Yet amputation is what is proposed by these bills. We are about to cut loose from our traditional policy of giving the people the inestimable benefit of equal opportunity in free competition by stifling competition in the greatest of all our enterprises. We are on dangerous ground. We are largely responsible for our predicament. The situation is grave, the interests involved are great, the far-reaching effect of this legislation none can foresee. If legislation is needed, it should be had, but it should be legislation to remedy not to aggravate the evil.

Danger lurks in this speedy resolve to make a law to appease a superficially analyzed public clamor. I believe in remedial legislation which cures. I am opposed to "sop" legislation, thrown to the public without logical expectation that it will or can furnish an adequate remedy. Later on I shall discuss the provisions of these bills, the force of existing law, and its effects as I see them. I shall also endeavor to point out wherein existing law can be fortified to meet its evasion through devices and practices thought out since its enactment. I can not subscribe, excepting as a last recourse, to methods that are revolutionary. Evolution has not blocked its wheels; it is still working out the solution of our difficulties; it follows the safest laws, those prescribed by nature. The time has not come as yet when Government ownership is to be considerable as a remedy for the complained of evils, be they real or fancied, substantial or trivial. I shall not hasten its coming by voting for a bill which seem to pave the way to all the evils incident to Government ownership of the highways of commerce of the nation and hasten greater evils than those from which the people are now asking relief. The fundamental principle underlying these bills is unwise. We may have to come to recognize it, perhaps even to ingraft it on our governmental system. That question will have to be treated when the necessity is at hand. I do not recognize such a present emergency calling for its present consideration, and shall vote against both of these bills.

I believe the Government should exercise reasonable supervi-

sion over corporations engaged in interstate commerce, but I do not believe this supervision should amount to governmental control, which would be the effect under either of these bills if enacted into law. [Loud applause.]

Mr. DAVEY of Louisiana. Mr. Chairman, I now yield to the gentleman from North Carolina [Mr. POU].

Mr. POU. Mr. Chairman, during the few minutes which I have been fortunate enough to secure it will be impossible to do more than submit a few general observations respecting the measure under consideration. It is said that there was a time when great measures were fully debated in this Chamber, and that some of the great debates of the world took place here. That day has passed. You know, Mr. Chairman—we all know—the House of Representatives of the United States is merely a machine controlled by the Speaker and a few of his lieutenants. I am not criticising the Speaker or his lieutenants for exercising the power vested in them. I am not finding fault with them because they have accepted what has been given them. But I do find fault with every Member of this body, whether he be Democrat or Republican, who has voted to surrender to two or three of our colleagues the power which our constituents expect us to exercise ourselves. It is not going too far to say that this House is merely a committee to frame and introduce measures to be thereafter considered by the Senate. Great measures are never properly discussed here. Our leaders tell us we must hurry along, that the Senate will debate the measure in a parliamentary manner, and that the Senate will perfect it. We haven't the time to consider measures carefully. All we are expected to do is to give the Senate an idea what we want and that body will send the bill back in proper shape.

One of the Republican members of the Committee on Rules has actually told us that we of this side of the Chamber should be thankful. Mark the word! Thankful for the poor privilege of offering as a substitute to the pending bill a measure prepared by the minority members of the Committee on Interstate and Foreign Commerce and afterwards indorsed by the caucus of the Democratic Members of this body. Mr. Chairman, have we actually come to this? No individual Member is allowed to offer an amendment; no individual Member is allowed to offer a substitute. The entire minority can not through its leader or members on the committees offer an amendment to the pending measure; but we are graciously, generously allowed to offer one—just one—substitute for the bill, and we are told by the gentleman from Pennsylvania on the Rules Committee that we should feel thankful for this privilege. In the name of parliamentary decency, I protest against a continuance of this condition. When the Fifty-ninth Congress meets you Republicans will have a greater majority than you have had in years. You can afford to be generous. I know that very many of you at heart detest the machine methods which for years have ruled this House, and I do hope that when your caucus meets to adopt rules for the government of the Fifty-ninth Congress there will be enough independents in your ranks to abolish these tyrannical rules, which are used to the exaltation of the few and humiliation of nearly all of us.

What is the situation right now, Mr. Chairman? We have under consideration one of the most important measures ever before the American Congress. We are proposing to give to seven men the power to fix freight and passenger charges over more than 200,000 miles of railroad, with a capitalization of more than $12,000,000,000, employing considerably more than a million men; and we are allowed about fourteen hours to discuss this great measure. We are allowed seven hours on this side, and we are permitted to offer just one substitute, and are told we should thank the Committee on Rules for that poor privilege. No gentleman must dare to offer an amendment. That would be presumption, and, moreover, it would encroach on the prerogative of the Senate. Any Senator can offer to amend, when the measure goes over there, but the gentleman who tries it here is laughed at and derided as a greenhorn.

How humiliating all this is! Let us remember this, Mr. Chairman: The people of this country will put us just where we put ourselves. If we announce to the world that the membership of this House can not be trusted to close debate within a reasonable time, that we are so reckless or irresponsible that we can not be trusted to adopt proper amendments to this and other measures, the country will not deny it. If we announce by our rules and by the action of our Committee on Rules that we can not be trusted to evolve a complete and sufficient measure to be sent to the Senate, the country will not dispute it.

When we admit that we rely upon the other Chamber to complete our crude work the country will not take issue with us. When we surrender our rights as Members to a few men, when we admit that we need bosses to direct us, the country will agree with us that it is probably true that we need these bosses to give us orders. The country and our constituents will acquiesce in whatever lack of capacity for legislation we ourselves admit. And yet, when we remember that under the Constitution this is the more powerful and more important of the two bodies, even as the House of Commons in England is more powerful and important than the House of Lords, this surrender of our dignity and our rights and our independence is all the more humiliating.

Mr. Chairman, I submit that these remarks are not entirely inappropriate just at this time. The hasty manner in which this important legislation is to be rushed through this House, the very short time allowed for debate, the arbitrary rule cutting off all amendments, afford but another illustration of the continuous decadence of the American House of Representatives.

I shall not discuss the necessity for some legislation conferring upon some agency the power to declare what is a just and reasonable rate, practice, or regulation. The necessity for such legislation is admitted of all men since the decision of the Supreme Court of the United States in the maximum-rate case.

Within the last few years there has been (to use the words of the Interstate Commerce Commission) "a rapid disappearance of railway competition," and we are told upon fairly good authority that a controlling interest in nearly all of the great trunk lines has found its way in the hands of a few men. We are therefore confronted by a great trust, which must either be ruled or else will itself demand and obtain whatever it chooses from the people. In dealing with this question the Republican party is in a dilemma. It will hardly be denied that the great railroad corporations did their full share in the recent campaign to continue the rule of that party for four years longer. In his passionate denial that any promise had been made in return for campaign funds furnished by the trusts during the recent campaign the President himself did not deny that the trusts and corporations had contributed to the campaign fund which his chairman was using. The Republican party is forced to do something to stifle the cry of the people for relief. The gentleman who framed the report of the committee admitted the widespread demand for some kind of legislation when he used these words on page 4 of his report:

> As showing the widespread interest in this legislation there has been filed with the committee thousands of petitions, resolutions, and telegrams from private individuals, corporations, and civic bodies, demanding that legislation along the lines suggested by the President's message and the above report of the Interstate Commerce Commission be enacted. Resolutions and memorials adopted by several of the States have also been presented.

Therefore something must be done. How can the people be satisfied without injury to corporate interests? That is the question which confronts the Republican party to-day.

I do not wish to be misunderstood. I do not question the sincerity of the President. I do not question the sincerity of gentlemen on this floor. But the President belongs to a party which belongs body and soul to the trusts, and gentlemen on this floor belong to the same party, and mark the prediction, Mr. Chairman, any legislation which popular clamor forces will be the mildest, the least hurtful to the railroads that Republican ingenuity can evolve. And I predict that the final effect of whatever legislation is enacted will be neither a remedy of present admitted evils or substantially detrimental to the interests of the great corporations affected. I will go even further and hazard the prediction that no legislation will be enacted which is seriously opposed by these great corporations. No doubt, in contemplation of some legislation of this kind, the Republican convention last year gave forth a deliverance. That convention announced the immortal doctrine of "stand pat." There is not one line in that platform indicating any necessity for legislation of this kind. According to that great document, everything needed to be done had already been done, and nothing remained but for the American people to "stand pat" and enjoy the bountiful fruits of Republican rule. Prices were high. The country was supremely prosperous, and would continue so as long as that party remained in power. Everybody was congratulated on the abounding and widespread prosperity which the country was then enjoying. Among a long list of "we have dones," we find this announcement:

> Laws enacted by the Republican party, which the Democratic party failed to enforce, and which were intended for the protection of the public against the unjust discrimination of the illegal encroachment of vast aggregations of capital, have been fearlessly enforced by a Republican President, and new laws insuring reasonable publicity as to the operations of great corporations and providing additional remedies for the prevention of discrimination in freight rates have been passed by a Republican Congress.

So you see, Mr. Chairman, according to the platform of the Republican party no evil exists, notwithstanding the statement of the President and the report of the committee.

In his message the President was forced to ignore this statement in the very platform on which he was elected; but he was probably reminded of the necessity of this legislation by another

platform of another party, which is constantly abused and ridiculed by those in sympathy with the trusts, but which declared in 1900 that—

We favor such an enlargement of the scope of the interstate-commerce laws as will enable the Commission to protect individuals and communities from discriminations and the public from unjust and unfair transportation rates.

And again in 1904:

We demand an enlargement of the powers of the Interstate Commerce Commission to the end that the traveling public and shippers of this Government may have prompt and adequate relief from abuses to which they are subjected in the matter of transportation.

Therefore, when the President recommended in his message that Congress "confer on the Interstate Commerce Commission the power to revise rates and regulations," he repudiated one of your Republican "has dones" and adopted a demand contained in two Democratic platforms. For one I honor the President for repudiating the hypocrisy of his own party and for admitting the existence of this vicious evil.

But, Mr. Chairman, I can not believe for one moment that the bill reported by the committee is satisfactory to the President. I am suspicious of this bill for several reasons. You know and I know that the one thing above all others the railroads do not want is legislation which confers upon any agency the power to fix rates at which they shall carry freight and passengers. It is but natural that these corporations should desire to retain the power to fix their own rates. The president of one great railway system has candidly stated as much. Now, if this bill accomplishes what its friends claim, you would see every great railroad system in this country opposing its passage; but up to this good hour there has been very little protest against its passage. Whether these corporations are serenely conscious that they have powerful friends "elsewhere," who will never allow it to become a law, remains to be seen.

The bill is a complex, intricate measure—rather obscure in some important respects. It confers power on the Interstate Commerce Commission in one paragraph and in another paragraph confers upon another tribunal power to veto and to nullify whatever that Commission may do to remedy existing evils. The bill confers upon one agency the power to do; upon another the power to undo. In one line the bill says the order of the Commission shall be operative thirty days after notice to the party affected by such order, but in the very next line it gives to any person affected by such order sixty days to appeal to the court invested with the power to undo all that the Commission does.

Aye, more than this, Mr. Chairman. So jealous is the majority of this committee lest even temporary injustice be done to these great corporations that a separate section gives to the court erected under this bill the power to restrain the Commission from enforcing its orders for even a single day, and this in the face of the recommendation of the President that "the revised rate go at once into effect and stay in effect unless and until the court of review reverses it."

Mr. Chairman, this is not the first time we have seen a play to the galleries enacted in this Chamber. I remember well the fate of a certain antitrust bill prepared by a distinguished gentleman from the State of Maine—still a Member of this House. We were told in the public prints that the President, during the summer months, had ordered the preparation of that measure. We were told that he had conferred upon the gentleman from Maine—the father of the measure—the great compliment of its preparation. We had the usual debate. We had the usual rule protecting us against ourselves in respect to the offering of amendments. Some gentlemen actually secured as much as six minutes to discuss the provisions of that important measure. In some quarters the bill was actually regarded seriously. For one, I was not so impressed. We were told that the bill was a compromise measure; that it was the child of much labor, of more thought, and of still more research. It had caused many a heartache, and friends of a lifetime had been torn asunder in the strenuous effort to seem to do something and yet do nothing.

Now, I give the gentleman from Maine credit of perfect sincerity of motive and purpose in the preparation of that measure, but when it came from the committee he hardly knew his own offspring. Then, Mr. Chairman, we went through the form of passing the bill; and then, oh, then, what became of it? The country was waiting, hopeful and expectant. The President stood ready to sign, with the ink quivering on his pen. But, Mr. Chairman, what became of that bill? It was a Republican measure, and we were told that that was the party which "did things." You have not forgotten the fate of that bill, Mr. Chairman, nor has the country. It was sent to a Republican Senate, which merely smiled, put the bill in a committee pigeonhole, and there it sleeps till this day.

So it will be with this bill, and so it will be with every bill which strikes at the interest of corporate wealth, or seeks to give to all men equal opportunities in the fierce struggle for existence. Imperfect as it is, the measure under consideration ought to pass. It has been correctly stated by our leader on this side that we of the minority stand ready to help you enact into law any measure which brings any degree of relief to those who have been wronged. If we can not get what we want, we will support anything you offer which contains any measure of relief. It matters little whether we support your measure or not. Its fate is decreed. You are now at the parting of the ways. Your party can not serve effectively two masters. It has already served the trusts so long that they have gotten possession of it body and soul. Sincere, honest, as gentlemen on this floor may be, brilliant and brave as your President is, neither you nor he can force the passage of a bill which combined wealth decrees never shall become law. [Loud applause.]

Mr. DAVEY of Louisiana. Mr. Chairman, I now yield to the gentleman from Kentucky [Mr. JAMES].

Mr. JAMES. Mr. Chairman, the House was regaled day before yesterday by the distinguished gentleman from Pennsylvania [Mr. DALZELL] with the following statement in the course of his speech:

I congratulate the Democratic party that since November last it has discovered that the man in the White House is a good man not only for the Republicans, but for the Democrats, to follow. [Applause on the Republican side.]

It very naturally becomes my duty, as well as my pleasure, to inquire, "Who is leading and who is following?" It is not, sir, so much a question of who leads, as an inquiry, "Does he lead right?" Is Roosevelt leading the Democracy, or has he come to understand from the mutterings of discontent throughout the Republic that the Democratic party was right and has gone to the head of its columns and is leading its troopers? We know a party by its declarations in national convention, and I shall now divert to the declarations of the Democratic party in its national councils and see what faith it held upon this great question of the proper and just regulation of railroad rates by law. In 1896 the Democracy announced its faith upon this question in these words:

The absorption of wealth by the few, the consolidation of our leading railroad systems, the formation of trusts and pools, require a stricter control by the Federal Government of these arteries of commerce. We demand the enlargement of the powers of the Interstate Commerce Commission and such rectrictions and guaranties in the control of railroads as will protect the people from robbery and oppression.

What did the Republican party say in 1896 upon this great question? You will search their platform in vain to find one single sentence in this direction, but they were as quiet as the tomb and offered to the people no relief along these lines. Again, in 1900 the same Democracy met in national convention, and its belief upon this question was as follows:

We favor such an enlargement of the scope of the interstate-commerce law as will enable the Commission to protect individuals and communities from discriminations and the public from unjust and unfair transportation rates.

Again I ask the question, What position did the Republican party take in its national convention? You will read again in unrewarded and hopeless effort to discover a single utterance upon this all-important subject. In 1904 the Democratic party again in national convention proclaimed its belief upon this issue in the following language:

We demand an enlargement of the powers of the Interstate Commerce Commission, to the end that the traveling public and shippers of this country may have prompt and adequate relief for the abuses to which they are subjected in the matter of transportation. We demand a strict enforcement of existing civil and criminal statutes against all such trusts, combinations, and monopolies, and we demand the enactment of such further legislation as may be necessary to effectually suppress them.

Any trust or unlawful combination engaged in interstate commerce which is monopolizing any branch of business or production should not be permitted to transact business outside of the State of its origin. Whenever it shall be established in any court of competent jurisdiction that such monopolization exists, such prohibition should be enforced through comprehensive laws to be enacted on the subject.

I come again and inquire what declaration the Republican party made in its convention which nominated President Roosevelt? Here you will read again in futile effort to discover a single word upon this subject. Therefore I ask, "Who is leading and who is following?" The truth is, Mr. Chairman, that Roosevelt is leading this fight, but he is wearing the uniform of Democracy, wielding its trenchant sword, and bearing its color lance. [Applause on the Democratic side.] For history tells me—

History, whose moving finger writes, and having writ, moves on, nor all your piety nor wit shall lure it back to cancel half a line, nor all your tears blot out one word of it—

that in three great contests the Democracy was agitating this great question throughout the length and breadth of the Republic, bold, fearless, and aggressive, daring to invite the enmity of

the railroads, with their twelve billions of capital, by declaring for equal protection for 80,000,000 of her people, and in 1896 we beheld the unmatched and brilliant Bryan standing in the wilderness, crying out to the people through his platform for this regulation by law, for this control of these great arteries of commerce; and I charge to-day that Roosevelt has taken this plank out of the Democratic platform that bears the bloody stain of Bryan's faithful feet, and is holding it up to this Congress as a panacea for existing woes. [Applause on the Democratic side.] And I come now asking that you shall "render unto Cæsar the things that are Cæsar's."

We all recall, Mr. Chairman, how fiercely, how mercilessly the railroads of this country fought Bryan and the Democratic party in these last campaigns. They saw at a glance the purpose of the Democratic party to demand of them just and fair rates and, as the President has so happily put it, "an equal chance for every man," and they triumphed, or caused the Republican party to triumph, in 1896 and in 1900. But while we went down in defeat, this great issue for which we fought and fell still lives, and rises with renewed strength, advocated by an unexpected champion. Why did not the Republican platform contain some declaration in 1904 upon this issue? Were the railroads too strong in that great convention? We all know the President is a brave man and a strenuous man. Why did he not call your Republican national convention's attention to it in that year? Then you were "standing pat" upon existing legislation; you feared the wrath of this great foe; but I beg you to imagine the courage of the Democracy of this country as it has written it in three great campaigns. [Applause on Democratic side.] This question has not burst upon the people like a meteor; it has been a constant burning red light of danger in the political firmament. The Democratic party saw it and quickly and fearlessly called attention to it.

Mr. Chairman, how time does change conditions! What Bryan contended for in this regard was denominated by every carping critic in the land as anarchism, but in Roosevelt the same declaration is greeted as patriotism of the highest type. We do not intend to desert our ground. We are "delighted," if I may be permitted to appropriate the President's own vernacular, with the accession of such a bold and fearless leader as Theodore Roosevelt. We welcome him to the head of the column, and behind him the Democracy will walk with unfaltering step, whether the band plays Dixie or Yankee Doodle. [Applause on the Democratic side.]

That the railroads should be regulated none familiar with the facts can safely deny. They are the world's great commercial highways, and, with their more than 200,000 miles of steel belting the Republic, reaching into every part and parcel of the land, having their life given to them by law, franchised into existence, aided by gift to millions upon millions of acres of the people's land, with millions upon millions of dollars of the people's money by subscription; given the right of eminent domain; the right to bridge our rivers and cross our plains, they can not now deny the right of the Government to ask them that they deal in mercy with its children, charging them for transportation a fair, just, and reasonable rate. More than thirty States in this Union, so far as possible, which is only within their own borders, have passed laws regulating the transportation charges of railroads. Our courts have uniformly held that such right was inherent in government; the Constitution of the United States itself declares that Congress shall have the right to regulate commerce between the States. We hear considerable said, Mr. Chairman, about a commission to pass upon the reasonableness of a rate. I submit that it is better for the Government to take a hand in saying what is a reasonable rate than to leave it to the scant charity of the railroads themselves.

It is a fact of common knowledge and of current history that the railroads of this country have divided off the United States, so far as the classification of rates is concerned, into four parts. The first contains the territory north of the Ohio River and east of Chicago and the Mississippi River; the second, the territory south of the Ohio and Potomac rivers and east of the Mississippi; third, the territory west of Chicago and the Mississippi River; fourth, competitive traffic to and from the Pacific coast.

And the representatives of the various railroads in these respective parts have their meetings each year and agree upon various charges for the various kinds of freight. While, of course, they sternly disavow any pooling or trust along this line, yet it is a fact worthy of comment that they all issue a schedule or tariff of the same rate for the same class of freight to and from the same points, and all are effective on the same day of the same year. Yet, of course, these meetings are purely advisory, and nothing intended, if they are to be believed, in agreeing upon the charges to be made upon the public; and I submit, sir, that it is better for the law to take a hand in these matters than to leave it to such combinations, who have it in their power to destroy communities, destroy cities, destroy farms, or to build up communities and cities at their pleasure. By such pools or combinations they deny to the farmer, the business man, or the shipper the benefit of competition among themselves, such competition as the farmer has to meet when he sells his corn, wheat, or other product of the soil. This illegal combination or pooling of railroads in a trust places every shipper in the country at their mercy. The soil may yield abundantly, Providence may be bounteous with sunshine and rain, the farmer may toil without ceasing, yet the fruition of his labor when it is gathered depends upon the charity of the railroads to reach the market. They can blast his hopes as effectually and as thoroughly as an untimely frost or a blighting drought; they can raise the rates and gather into their overflowing coffers as much as their unsatisfied maw may desire.

I believe, Mr. Chairman, that when a rate is once established by the Interstate Commerce Commission as just and reasonable, it ought to be placed in effect immediately, because if you do not do this many kinds of perishable products would spoil before the question could be finally determined. Not only should this rate go into effect at the earliest practicable moment, but it should not be suspended by a temporary restraining order, which is ex parte in its hearing; but it should only be suspended, if at all, by injunction issued after notice to the Commission and full hearings upon the facts. The bill of the majority, in my judgment, is fatally defective here, because we all know that an injunction or temporary restraining order is the common resort always used by the corporations in proceedings in court, and they would be quite ready to make showing upon ex parte hearings that would ordinarily give a restraining order; but let notice be given, let all the facts be heard, and then let the restraining order issue, if at all. This will tend to accelerate the hearing of these complaints. The railroads will not undertake to rest with their restraining orders charging an exorbitant rate, but they will be quick to the courts and the justice of the matter swiftly determined. In another particular, in my judgment, the bill of the majority, commonly known as the "Esch-Townsend bill," is defective, and that is in not providing an imprisonment penalty. You provide in this law only a penalty by fine. I say, Mr. Chairman, we ought to go back to the old idea in this country that the rich ought not to be permitted to purchase immunity from punishment by the payment of a fine. You amended this law with the Elkins bill, and the only amendment in reality that was effective was the one that took from it the penalty of imprisonment in the penitentiary or the placing of stripes upon these great violators of the law.

Let these big violators of the law see niside of the penitentiary and observe its dissimilarity from the seashore resorts and they will have some respect for the law of this land. Let a picture be taken of one or two of them in stripes instead of in automobiles [laughter and applause on the Democratic side], and then, sir, we will have the poor of the country telling us that the law is administered alike upon every citizen. Suppose you fine them—what's done? They can raise the rate and let it be paid back by the people, but when you put stripes on them they can not make the people take their place. If a farmer breaks into one of their offices and robs them of their money, he has violated the law and ought to be punished, yet without any ceremony and with very little discussion the stripes are placed upon him; but when these millionaires violate the law by confiscating virtually the products of his farm, the fine is all you will impose upon them. And it won't do, Mr. Chairman, to say that if the penitentiary penalty is placed in this law it is ineffectual, because you can not convict on account of the enormity of the penalty. That is simply to say that you are dealing with a class of criminals so hardened and conscienceless that if the penalty is great they will add to their already violation of the law the great crime of perjury and shield themselves from punishment; but if the penalty is minimum, it's an inducement to them not to resort to perjury to escape, but to tell the truth and pay off the fine.

If this argument is carried to its finality, the same logic applied would make us place the penalty for murder at a $50 fine, because it would be more easily inflicted than the death penalty and less resorts to perjury would be taken.

Even with these defects I regard the bill known as the "Esch-Townsend bill" presented by the majority a great improvement over the laws now existing, because it empowers the Interstate Commerce Commission not only to declare a rate unreasonable, but to declare what is a reasonable rate. It gives them power to act and enforce their findings. I think it creates an unnecessary court to which appeals from their judgment are taken; I think the railroads should go from the Interstate Commerce

Commission only upon the constitutionality of their action, and then to the same court that the humblest citizen in the Republic has to resort to. I think the bill offered by the Democratic minority is a far better measure than the Esch-Townsend bill, and I shall vote for the bill which was indorsed by the Democratic caucus, but failing in its adoption, I intend to support the bill presented by the majority as a step in the right direction, as half a loaf offered if we can get no more.

I say, Mr. Chairman, that we are glad to welcome the President to the Democratic platform. Many good planks are in it, and as he is now securely fixed in the Presidential chair for the term for which he was elected, no more to be a candidate as he himself has declared, let him become the tribune of the poor, let him wield the righteous sword of the common people. I look forward to the time when he will send a message to Congress saying that he wants this House to reform the tariff and put all trust-made articles on the free list; that he will go further and say that all articles manufactured in this country that are protected by a tariff and sold to foreigners cheaper than to citizens of this country shall be placed upon the free list; that he will ask us to effectually destroy the trusts by denying them the right of interstate commerce, and saying that when the fact is ascertained in any court of competent jurisdiction that an article is trustized it shall not be sold outside of the State of its production; and that he will ask us to deny them the use of the United States mails; that he will take a fearless stand for the suppression of private monopolies.

All these planks are in the Democratic platform. We are willing to follow him along these lines. Let him send a message to this House saying that we ought to go back to the pristine days when the immense fortunes of this country did not escape taxation, when the tax gatherer visited the palaces of the rich as well as the hovels and cottages of the poor, and let him ask us to rehabilitate the income-tax law and place it upon the statute book, and see if the Supreme Court, with its change of personnel, has not changed its position upon this most equitable of all ways to defray the burdens of government. [Applause on the Democratic side.]

We know that the soldiers of the United States followed Roosevelt gallantly when he charged San Juan Hill, but no more bravely, sir, than the Democrats will follow him when he charges the Vanderbilt-Morgan-Cassatt-Harriman-Hills of wealth and greed in this Republic with planks from Democratic platforms. [Loud applause on the Democratic side.]

Mr. ZENOR. Mr. Chairman, the time allotted me for the discussion of a bill of the magnitude of the one that is now pending before the House make it perfectly apparent that it will not be possible to undertake the discussion of its details or the details of any other bill that is presented for the consideration of the House at this time. To do this would require more time than can be occupied by any one of the great number of Members who desire to speak upon the subject. Mr. Chairman, I have taken as much pains as possible in the length of time I have had to look into and consider the extension and very exhaustive hearings had before the Committee on Interstate and Foreign Commerce, with a view of arriving at a fair and just conclusion regarding the merits of these several bills; and it seems to me that this controversy, which has for so many years been going on in this country, should find a happy and satisfactory solution by the enactment into law of the best features and wisest provisions of these several bills. The country demands some relief from the National Congress; some wise, conservative, and efficient measure for regulation of railroad fares and rates. This agitation is not one of recent origin, not of recent date, as has been suggested by some gentlemen who have addressed the House.

For more than ten years, Mr. Chairman, the people all over this country have been discussing this matter, and they have been clamorous for some relief against the extortionate rates that have been exacted by the railroads and common carriers of the country. Now, with the committee having under consideration some twenty-two bills, all addressed to the subject of giving some relief to the people of the country upon this important subject, and after a careful and patient hearing before that committee, composed of most able, distinguished, and learned gentlemen, who have given patient consideration to all of the representatives of the several interests involved, who have appeared before them, and weighed and analyzed their testimony, with this abundant source of information at hand, embodying not only the ideas of the authors of some twenty-two bills, but the opinions and judgment of a large class of business men, it would seem strange indeed if they were not able to evolve some measure calculated to give some measure of relief in response to the great demands of the people and the business interests of the country.

The bill known as the "Townsend bill," which is a bill supposed to embody the majority views of this committee, and the bill known as the "Davey bill," which embodies the views of a majority of the minority of that committee, and the bill which has been presented by at least two members of the minority of that committee known as the "Hearst bill," all express different views upon the subject of what is the proper method of giving this relief so earnestly demanded by the people. I am inclined, Mr. Chairman, to believe that the provisions of the minority bill come nearer carrying out the views as expressed by the President of the United States than do the provisions of the bill known as the "Townsend bill." The great objection that might be and is urged to the provisions of the Townsend bill seems to be that it does not give the power to the Interstate Commerce Commission that is suggested by the President of the United States and demanded by the people.

For more than ten years after the enactment of the law of 1887, which was the first step taken by Congress to regulate railroad fares and railroad rates and to prevent extortion by the common carriers of this country—for ten years after the enactment of that law the people and the railroads, carriers, and shippers alike, seem to have acquiesced in the general supposition that Congress had conferred upon that Commission the power to not only inquire into and ascertain what was an unreasonable rate, but in addition thereto to fix what they considered was a reasonable and just rate and to supplant the old with the new rate.

But in 1897, in what is known as the maximum-rate decision, the Supreme Court of the United States, for the first time having the question presented to it, held that by the law of 1887 Congress had failed to confer upon the Commission the power to regulate and fix rates in lieu of those ascertained and determined by them to be unreasonable and unjust.

This decision of the Supreme Court absolutely emasculated the Commission. It absolutely left it powerless to afford any remedy. It became as ineffective and powerless to grant relief as though stricken from the pages of the statute book. It is to supply this omission and to embody in a bill now to be considered and passed provisions conferring upon the Commission the power not only to ascertain what is an unreasonable rate, but to fix in lieu a rate that is determined by the Commission to be a reasonable and just rate.

Now, the provisions in regard to this particular phase of the question embodied in the Townsend bill, it seems to me, are too uncertain, indefinite, and obscure, and, besides, contains other provisions which will defeat instead of carry into effect the idea as expressed by the President. It gives to the Interstate Commerce Commission, it is true, the power that was supposed to have been lodged in that Commission by the act of 1887, to wit, the power to determine what is a reasonable rate in lieu of that which is found to be unreasonable and to substitute that rate, with power to enforce it.

But it also provides, not as expressed by the President of the United States, that the finding of the Commission should take effect at once and remain in force until it was repealed or reversed by the court of review, but that the finding and order of the Commission shall not take effect until thirty days after notice to the parties affected, and then gives sixty days more within which to appeal, and provides that in the meantime the order may be set aside or suspended before final judgment of the court of review.

The President says in his message that the rate determined and fixed by the Commission should go into effect at once and remain in force until and unless the court of review reverses it. Members of the House are reminded by the numerous petitions and memorials which have been addressed to Congress upon this subject—and there are hundreds of them now upon their desks—appealing to Congress to give this Interstate Commerce Commission not only the power to determine and fix reasonable rates, but as well the power to enforce the rates when fixed by the Commission; not only this, but they demand that this finding and order of the Commission shall go into effect and operation at once and remain in operation and full force until upon a review by the court having jurisdiction it shall determine the rate fixed to be an unreasonable and unjust rate.

Mr. Chairman, as already remarked, the original law enacted upon this subject, known as the "interstate-commerce law of 1887," was the first attempt made by Congress to control by legislative action the regulation of the rate-making power of our great transportation lines of interstate commerce. This action was the result of a public agitation—of a demand growing out of the evils of exorbitant, high, and excessive railroad rates, the burdens of which had aroused the people, though at that time experienced in a much less acute sense than has been the case in more recent years. At that time and by that law a

Commission was organized, composed of five distinguished citizens of well-known learning, ability, and business capacity, and given such jurisdiction and powers over all questions arising out of transportation rates, rebates, and discriminations as was supposed and believed to be commensurate with the evils with which they had to deal. It was evidently the purpose and intention of Congress by that measure to confer upon the Commission, among others, the power to hear and determine, upon complaint made, the unreasonableness of any rate or charge made by any railroad company or common carrier for persons or freight transported over their lines and to substitute in lieu thereof a reasonable and just rate.

Power was also given the Commission to apply to the Federal courts and invoke their aid to enforce the orders and findings of the Commission in case the railroad or carrier failed or refused to obey and carry out the orders and findings of the Commission. The law, as thus passed and as subsequently administered for about ten years, was found to work well and was, in a measure, satisfactory. Great good was accomplished and much relief afforded shippers, producers, and consumers everywhere. Of course all the evils complained of—all the excessive and unreasonable high rates charged and discriminations practiced by the railroads—did not immediately disappear. This would be too much to expect. It could not be hoped that all this could be accomplished at once. But the results more than proved the wisdom of the measure, and as the Commission proceeded with its work, time and experience added to its efficiency as a governmental agency in reforming these great abuses. Railroads were fast coming to regard the Commission with wholesome fear and respect its authority by yielding ready and willing obedience to its mandates. No question seems to have been made from the date of that law until 1897 concerning the powers of this Commission.

In the large number of cases brought before it, it seems never to have been suspected that any defect existed in the law to fix rates until the Supreme Court decision in 1897. Up to that time the exercise of this power was acquiesced in and submitted to. Without challenge it proceeded to exercise the power of revising rates quite satisfactorily to the country. But on May 26, 1897, the Supreme Court, in the case of Interstate Commerce Commission *v.* Cincinnati, New Orleans and Texas Pacific Railway Company (167 U. S. Rep., 499), Justice Brewer delivering the opinion, used this language:

> It is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act; but an entirely different thing to prescribe rates which shall be charged in the future—that is a legislative act.

By this decision the powers of the Commission were wholly paralyzed. It was shorn of all its virtue as an agency for the accomplishment of the ends which had inspired its original creation. Its vitals were torn out and it remained from that on substantially a dead letter. The only power left in the Commission after this decision was the power, if I may so dignify it, of determining what was an unreasonable rate, without any authority to fix in lieu thereof what it might find, as a result of its investigation, was a reasonable and just rate. The first power—that is, the power to find what would be an unreasonable and unjust rate—is a judicial act; the second power—that is, the power to prescribe rates which shall take its place and be charged in the future—is an entirely different proposition. That is a legislative act. And the court holds in this case that Congress did not, in the act of 1887 creating the organization of the Commission, confer upon the Commission legislative powers as it was supposed and believed to have done up to this time, for the Supreme Court, in this same opinion (167 U. S., 511), clearly indicated this when it said:

> Our conclusion, then, is that Congress has not conferred upon the Commission the legislative power of prescribing rates, either maximum or minimum or absolute.
>
> As it did not give the express power to the Commission, it did not intend to secure the same result indirectly by empowering that tribunal to determine what, in reference to the past, was reasonable and just, whether as maximum, minimum, or absolute, and then enable it to obtain from the courts a peremptory order that in the future the railroad companies should follow the rates thus determined to have been in the past reasonable and just.

The logical result of this judicial construction of the scope and powers of this Commission was to make of it an anomaly in our legislative and judicial history. It is neither a legislative nor judicial tribunal. Its peculiar functions, as it now stands, may be better and more aptly defined by Judge Jackson, of the Federal bench, who has thus described the powers of the Commission:

> The functions of the Commission are those of referees or special commissioners appointed to make preliminary investigation and report upon matters for subsequent judicial examination and determination. In respect to interstate-commerce matters covered by the law, the Commission may be regarded as the general referee of each and every circuit court of the United States upon which the jurisdiction is conferred of enforcing the rights, duties, and obligations recognized and imposed by the act. It is neither a Federal court under the Constitution, nor does it exercise judicial powers, nor do its conclusions possess the efficacy of judicial proceedings. (37 Fed. Rep., 613.)

It was this chaotic condition, Mr. Chairman, of all of our legislation or attempted legislation in restraint of the railroads and common carriers, of which they have not failed to take advantage, that has aroused the people to an intense feeling upon this subject; and it is well that Congress and Members of this House pay heed to their earnest and patriotic appeals while yet addressed to us in patient and forbearing terms; for a denial or even further delay to comply with their just and reasonable demands may provoke others of a more radical and extravagant nature and perhaps such as would or might be extremely embarrassing for Congress to grant and still more to refuse. If there is any one thing for which the American people are to be commended more than another it is their calm and long-suffering patience. It may not always be so. After waiting, hoping, and expecting, for eight long years for promised legislation of vital and transcendent interest—legislation that should have been given them long since—that they should demean themselves with such forbearance, and address by petition and otherwise the Members of this House and the Congress in terms of such moderation and mildness, is astonishing almost beyond belief.

Sir, I believe I know something of the temper of the people of my own State upon this question. I believe I voice the unanimous sentiment of the people of the great State of Indiana, which I have the honor in part to represent upon the floor of this House, when I say they favor the immediate passage of some measure of legislation that will afford prompt and efficient relief from what they believe to be unfair and unjust exactions of the great railroads engaged in interstate commerce. They do not demand this because of any hostility or unfriendly feeling toward the railroads. Like the people elsewhere and in every other State and section of this great country, they fully appreciate and realize how much they owe to these great agencies in the development and progress of our country. They fully understand and comprehend how indispensably necessary these great highways of commerce are and have been in reclaiming the waste places and opening up to settlement the vast and boundless regions of this great Republic, otherwise inaccessible and valueless; the mighty factors they have been in every phase and stage of our civilization; that without their aid and cooperation the inexhaustible resources of the natural elements of our marvelous wealth as the foremost nation of the world would not to-day be the pride and boast of every citizen of the land.

They realize all this and more, for they know that field and farm, forge and factory, and all the multiplied agencies in our great industrial system are indissolubly linked with our great system of interstate transportation; that there is and must be an interdependency between production, exchange, and consumption; that commerce consists in exchange of commodities between separated localities, between different and distant communities, States, and countries; that transportation has to do with travel, traffic, and communication; that it is concerned with the movement of persons and things. They understand that the term is applied both to the instruments by which movement is accomplished and to the service performed by those agencies; that the several instrumentalities—waterways, highways, railroads, and the vehicles used upon them, collectively and in combination—constitute our great transportation system.

Realizing all this, and willing to accord full protection and fair and reasonable treatment to railroads and fair and reasonable rates for services rendered by them, yet they further realize that railroads owe their existence to the people; that they derive their charters from the lawmaking power and are granted extraordinary and special privileges; that they are quasi public corporations, and owe a duty to the public, and are subject and should be subject to the control of the power that gave them birth.

The right of governmental regulation of the rate of fares and freight charges for services performed by railroads is not and can not be denied, so long as such regulation is reasonable, just, and equitable, and does not amount to a confiscation or destruction of the value of property. But, Mr. Chairman, no one wishes to do this; no one desires to deprive the railroads or common carriers of a reasonably fair profit upon the capital invested over and above the expense of operation. Every reasonable citizen is willing to concede and does concede that the

railroad corporations and other carriers should have and enjoy a fair, reasonable, and just rate and profit, and conceding this he demands in return equally fair and just treatment at the hands of the railroads. Railroads are natural monopolies within certain zones of territory, and unfortunately in recent years in this country, in many if not in a majority of cases, they have become artificial and law-made monopolies, and have well-nigh destroyed all railroad competition. With the elimination of competition all barriers are removed and the producer, shipper, and consumer become helpless victims of the relentless greed of selfish monopoly.

Under such circumstances as these is it at all strange that the people should cry out against the power of railroads and their unrestricted right to arbitrarily fix the rates of freight over their lines of road?

Mr. Chairman, I have undertaken briefly, but very imperfectly, I know, to recite some of the many considerations that, in my judgment at least, have intensified and reenforced public sentiment to demand remedial legislation such as is now proposed.

Mr. Chairman, as an evidence of the widespread and thoroughly aroused public sentiment upon this question I may be pardoned for suggesting that since the beginning of this session of Congress I have received a number of letters and petitions from the people of my district—and I presume the same is true of other Members—not only asking me to do what I can to aid in the passage of some measure for relief in this behalf, but they have gone much further than this. They are emphatic in their demands for a law along the lines indicated by the President in his message. And to still further illustrate the state of this feeling in my State, Mr. Chairman, I may say that I received only this morning through the mail a copy of a resolution unanimously adopted by the State senate on the 27th of last month memorializing the Senators and Members of the delegation from my State to support and vote for some measure upon this question embodying the idea expressed by the President. The resolution reads as follows:

Senate resolution No. 31.

Be it resolved by the senate of Indiana, That the United States Senators and Representatives of Indiana in the Congress of the United States are requested to use their influence toward enacting into law at the present session of the Congress the recommendation contained in the President's message, that "the Interstate Commerce Commission should be vested with the power, where a given rate (for the transportation of property in interstate or foreign commerce) has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place; the ruling of the Commission to take effect immediately, and to obtain unless and until it is reversed by the court of review."

HUGH H. MILLER,
President of Senate.
JULIAN D. HOGATE,
Secretary of Senate.

This resolution, Mr. Chairman, I take it, fairly expresses the sentiment of the people of my State, and this sentiment is but an echo of that wider and more general sentiment that permeates the entire country. It is true, sir, that the resolution refers to President Roosevelt's message as an indication of the character of legislation desired, but I desire to call the attention of this House and that of the country to the fact that the President was not the pioneer in this great reform movement, nor was he the first to give tone and emphasis to this proposed and much-needed legislation. But, Mr. Chairman, having taken an advanced, bold, and strenuous position on this most important question—having entered the camp of the Democratic party on this proposition and reiterated in his message the declaration of the Democratic party in its two last national conventions—we extend a cordial welcome and gladly embrace the rare and exceptional opportunity of standing by him in this instance, as we will in all others when we believe him to be right. Mr. Chairman, speaking for myself, I want here and now to declare that it makes no difference to me about the genesis of any measure of legislation; no difference to me whether it bears a Democratic or Republican parentage, if it is projected along lines of needed legislation and is calculated to safeguard and promote the public weal, I am for it regardless of its origin.

Now, I want to call attention in this connection to what the President has said upon this subject and then point out, if I can, the difference between what he said was essential to meet the present situation and what the Townsend bill proposes. In his message the President, upon the question of railroad rates, rebates, and discriminations, used this language. He said:

While I am of the opinion that at present it would be undesirable, if it were not impracticable, finally to clothe the Commission with general authority to fix railroad rates, I do believe as a fair security to shippers the Commission should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place; the ruling of the Commission to take effect immediately, and to obtain unless and until it is reversed by the court of review.

The Government must, in increasing degree, supervise and regulate the workings of the railways engaged in interstate commerce; and such increased supervision is the only alternative to an increase of the present evils on the one hand or a still more radical policy on the other. In my judgment the most important legislative act now needed as regards the regulation of corporations is this act to confer on the Interstate Commerce Commission the power to revise rates, the revised rate to at once go into effect, and stay in effect unless and until the court of review reverses it.

It will be observed that the President repeats his statement in relation to the most important point in this needed legislation, to wit: "The most important legislative act now needed, as regards the regulation of corporations, is this act to confer on the Interstate Commerce Commission the power to revise rates, the revised rate to at once go into effect and stay in effect unless and until the court of review reverses it." Now, what are the provisions of the majority or Townsend bill upon this point? Let me point out this provision, and contrast the same with what the President says. Section 1 contains this language, and it is the only provision upon the question. It reads as follows:

That whenever, upon complaint duly made under section 13 of the act to regulate commerce, the Interstate Commerce Commission shall, after full hearing, make any finding or ruling, declaring any existing rate for the transportation of persons or property, or any regulation or practice whatsoever affecting the transportation of persons or property, to be unreasonable or unjustly discriminatory, the Commission shall have power, and it shall be its duty, to declare and order what shall be a just and reasonable rate, practice, or regulation to be charged, imposed, or followed in the future in place of that found to be unreasonable or unjustly discriminatory, and the order of the Commission shall, of its own force, take effect and become operative thirty days after notice thereof has been given to the person or persons directly affected thereby; but at any time within sixty days from date of such notice any person or persons directly affected by the order of the Commission, and deeming it to be contrary to law, may institute proceedings in the court of transportation sitting as a court of equity, to have it reviewed and its lawfulness, justness, or reasonableness inquired into and determined.

Now, I take it that it requires no argument to show that this does not measure up to the full requirements of the President's suggestion. It does not make the findings and order of the Commission, when it has ascertained what a reasonable rate is, take effect at once and remain in force unless and until reversed by the court of review. By its express terms the order is not made to take effect until thirty days after notice to the parties affected, and then gives sixty days thereafter within which any party to the proceeding may institute proceedings in the court therein provided for, sitting as a court of equity, to have such order reviewed and its lawfulness, justness, or reasonableness inquired into and determined. If the bill stopped where the President did, this provision might be effective and accomplish the purpose, but, unfortunately, it does not do this. Unfortunately, as I believe, the latter clause or concluding language of the section destroys and nullifies the efficiency of the whole measure, and if it becomes a law will be found a serious handicap in its administration, of which the railroads and carriers will be quick to take advantage.

Again, this bill does not forbid the Commission to raise rates fixed and established by the carriers; and furthermore, it in another section—section 14—authorizes any justice of the court upon notice to make and award at chambers, and in vacation as well as in term, all process, commissions, orders, rules, and other proceedings, including temporary restraining orders, wherever the same are grantable, as of course, according to the rules and practice of the court.

Now, Mr. Chairman, every lawyer understands what this means, and I believe that it will afford to the railroads and carriers the opportunity by resort to the well-known practice that obtains in courts of securing injunctions, restraining orders, and other interlocutory decrees, suspending and setting aside the findings and orders of the Commission when made before the same is finally heard and determined upon their merits in the court of review—the very thing of all others, it seems to me, that was sought to be avoided by the President and is desired to be avoided by the people. What the people want and what they demand, and they will be satisfied with nothing less, is a plain, simple, and straightforward law that will enable the shipper and producer and all parties in interest to obtain speedy and effective relief from any unjust and extortionate rates charged, and to secure this relief if possible before they are compelled to pay the rate. To wait until they are forced to pay is equivalent to a denial of any remedy at all.

Again, Mr. Chairman, the majority or Townsend bill provides for the organization of a new court of five circuit judges, who shall have exclusive jurisdiction of all cases arising under the interstate-commerce law, together with a full complement of officers at a large expense, and to further increase the membership of the Commission from five to seven and increase the salaries of these members from $7,500 to $10,000 each. I do not believe, Mr. Chairman, that this is at all necessary to effi-

cient administration of the law. On the contrary, I believe that the courts now organized and having jurisdiction of these cases, and which have always tried and determined such cases since the organization of the Commission, are amply sufficient for this purpose, and that this proposed change both in the courts and increase in the number of the members of the Commission is a useless, an inexcusable expenditure of money. Mr. Chairman, these and some other less important reasons induce me to declare my very decided preference for the minority or the Davey bill. This Davey bill is the one and only one that we will be privileged to vote upon under the rules aside from the majority or Townsend bill. And I am free to announce at this time that if the Davey bill fails, as I know it will, I shall vote for the Townsend bill upon the theory that half a loaf is much better than no bread at all.

Now, sir, I have said I preferred the Davey bill to the Townsend bill, and why do I say so? Mr. Chairman, my reasons are, briefly, these: The Davey bill possesses all the virtues of the Townsend bill and, in my judgment, some few more, and is free from its vices. It more nearly, if not literally, embodies the idea expressed by the President, and is in every way a more Democratic and perfect measure to cure the evils and restrain the abuses complained of. It provides that the findings and orders of the Commission shall take effect after twenty days' notice and shall remain in effect unless and until reversed by the court of review. It forbids the Commission to raise rates, and confers all the power upon the Commission asked for by the President and so frequently and repeatedly requested by the Commission itself. It does not create any new court nor increase the number or salaries of the members of the Commission. Its provisions are in harmony with every suggestion of improvement by way of amendment of the interstate-commerce law as it now exists in all the criticisms that have been made.

The first section of this bill reads as follows:

Be it enacted, etc., That when, hereafter, upon complaint made, and after investigation and hearing had, the Interstate Commerce Commission shall declare a given rate, whether joint or single, or regulation or practice, for transportation of freight or passengers, unreasonable, or unjustly discriminative, it shall be the duty of the Commission, and it is hereby authorized to perform that duty, to declare, at the same time, what would be a fair, just, and reasonable rate, or regulation, or practice in lieu of the rate, regulation, or practice declared unreasonable, and the new rate, regulation, or practice so declared shall become operative twenty days after notice: *Provided*, That the Commission shall in no case have power to raise a rate filed and published by a carrier.

The second section provides that when the rate shall be fixed by the Commission it shall continue as the rate to be charged by the carrier during the pendency of any litigation that may ensue by reason thereof until the decision of the Interstate Commerce Commission shall be held to be error on final judgment of the questions involved by the court having proper jurisdiction; and that the case shall be determined by the court upon the record as made up and certified to it from the Commission. This second section reads as follows:

SEC. 2. That whenever, in consequence of the decision of the Interstate Commerce Commission, a rate, regulation, or practice has been established and declared as fair, just, and reasonable, and litigation shall ensue because of such decision, the rate, regulation, or practice fixed by the Interstate Commerce Commission shall continue as the rate, regulation, or practice to be charged by the carrier during the pendency of the litigation and until the decision of the Interstate Commerce Commission shall be held to be error on a final judgment of the questions involved by the United States court having proper jurisdiction, but no proceeding by any court taking jurisdiction shall consider any testimony except such as is contained in the record.

Now, Mr. Chairman, taking the two bills and comparing their provisions upon the vital points involved, I am persuaded to believe that the minority bill possesses superior merits and would be preferred by the country. I believe that its provisions are fair and just toward all parties concerned; toward the railroads upon the one hand and the people upon the other. With no other guide to mark the path of duty but an honest and sincere desire to aid in the passage of some measure that will eventually solve this difficult and complicated problem with fairness and justice to all, I shall cast my vote, first for the Davey bill, and if this shall fail, then for the Townsend bill.

I confess to the belief that if, under rules that would permit, the opportunity was open to Members of this House to offer amendments that a still more satisfactory, if not more effective, measure would be evolved for our final action. But we are in the grasp of a hard and fast rule of this House, evidently designed to force the passage of the bill, sanctioned by the majority as it came from the hands of its sponsors, and we must bow to our fate. If the measure shall become a law, and it does not meet up with the expectations of the country or fails to realize the assurances given to the people by its friends and advocates, the fault must not be charged to any lack of effort or zeal of purpose on the part of this side of the House. The majority, who have shaped its provisions and guided its destiny through this House, if it shall become a law may rightfully claim credit for it, and if the logic of the situation shall decree that it is the only hope for legislation in this direction it will be earnestly supported by substantially the unanimous vote of this side of the Chamber in its final passage. But, Mr. Chairman, while I indulge the belief that this will be true, it must not be conceded that this will be the result of the free volition of many of us who propose to pursue this course. Speaking for myself and as an individual Member of this House, I feel that I would much prefer to support a measure that forbid the Interstate Commerce Commission from raising the tariff rates fixed by the carrier under any and all circumstances.

I believe that the power conferred upon this body should be limited in this respect to fixing a reasonable and just maximum rate, and leave the carriers free to reduce the rates whenever conditions or circumstances operate to justify them in doing so. I believe this is in the interest of the shipper, the producer, and consumer, and all the patrons of the great lines of transportation. In my view this could not possibly operate to the prejudice of any class of persons or property and would secure to the people and the country the benefits and advantages resulting from competition. I am, Mr. Chairman, unalterably opposed to any proposition that hampers or destroys the great fundamental principle of competition. I believe that competition is one of the most valuable and beneficent factors possible in the regulation of rates and freights in the operation of railroads and other great lines of transportation, and should be left without any arbitrary or artificial restraints placed upon it. What is the great purpose of this legislation, Mr. Chairman? Certainly not to raise, but to lower rates; and no provision of law, in my judgment, that will either require or permit the Commission to raise rates is justifiable.

Railroads are amply capable of looking after this question, and legislators need give themselves no concern about it. For years unlawful combines and mergers of great railroad and other corporate interests have been going on with the view of stifling and crushing out fair and legitimate competition. This gradual process of absorption and concentration of the independent and competing roads under one general management and control has well-nigh accomplished a complete monopoly of railroad management throughout the country. And all this is done to raise rates and increase profits. The imperative need of some immediate, efficient, even drastic, legislation to check this constantly growing and dangerous tendency is admitted upon all hands. And, Mr. Chairman, right here and in connection with this branch of the subject I wish to call attention to what the Industrial Commission, organized a few years ago, composed of four Members of this House and four Senators and other eminent men of this country, after three or four years of diligent and thorough investigation of these transportation problems, speaking of the decision of the Supreme Court upon this subject, says:

The immediate effect of this decision was to prevent any enforcement of orders relative to rates by the Commission. The carriers immediately refused to obey any orders which the Commission issued for the redress of grievances. This policy has been manifested with increasing clearness during the five years subsequent to the decision. It has become more and more certain that the denial of the right, not only to pass upon the reasonableness of a particular rate, but to prescribe what rate should supersede it, means the abolition of all control whatever. The entire inadequacy of making rate regulations dependent upon the mere determination of rates as applied in the past without reference to rates which shall prevail in the future is apparent on all sides. More than this, all remedy for the parties who have borne the burden of an unreasonable rate would seem to have been removed. * * * Experience shows that almost no shippers or other parties injured actually attempt to secure the restitution of moneys already paid for unreasonable charges. In only 5 out of 225 cases down to 1897 was a rebate (or refund) actually sought, and in these cases $100 was the maximum sought to be recovered. As a matter of fact, the damage inflicted by the existence of an unreasonable rate could not be measured by hundreds or perhaps by hundreds of thousands of dollars. The bearing of this citation is to show that any effectual protection to the shipper must proceed from adjudication of the reasonableness of rates before and not after they have been paid; that is to say, in advance of their exaction by the carrier. Power to pass upon the reasonableness of such rates prior to their enforcement as a consequence constitutes practically the only safeguard which the shipping public may enjoy.

Again, on this same question, Commissioner Prouty presents the popular view of the methods employed to effect railroad combinations and the results. He says:

Now, gentlemen, you may talk about railroad competition, you may rely upon railroad competition to reduce rates or to regulate rates, but there is no railroad competition. When five men seated around a table in the city of New York can say what the rate on grain shall be from Kansas City to the Gulf and from Kansas City to the seaboard, from the Missouri River to the seaboard, and from the grain fields to Chicago and Duluth, you have not any more competition in the movement of grain. When five men can sit down around a table in the city of New York and say the rates shall be so and so, "if at the end of the year this thing does not pan out to be as we think it ought to we

will make it right," you have a pooling arrangement that can never be reached by any law. One of two things has got to result. Either these five men will agree upon some modus vivendi, upon some apportionment of the territory of this country, as they have done in England to-day, with the result that they have the highest freight rate here in the world, or they will become partners, or one man will buy out the other four.

Again, here is what is said by another distinguished member of the Commission. Here is what Commissioner Knapp says:

There is a form of competition, however, which has a very powerful influence upon tariff rates and upon attainable rates, and that competition will continue for a long time to come. That is the competition of the markets. Chicago originates an immense traffic; so does St. Louis. The carriers leading from Chicago need that traffic for the revenue it secures. The carriers from Chicago, therefore, have got to make a rate as compared with rates from St. Louis which will enable the Chicago man to do business, for the railroads are just as anxious to get the traffic as the merchant is to sell his goods, and that is a thing that is going on all over the country.

New York and Philadelphia and other cities on the Atlantic seaboard are competing for the enlarging market south of the Ohio and Potomac rivers, and Chicago and Milwaukee and other cities in the Middle West are also eager to secure the trade of that same territory, and the lines which lead from one section of the country in that consuming territory and from the other section of the country are not likely to be confederated, and if they could be it would not be of any advantage to either of them; and the pressure of the producing public to sell the goods and the competition between sellers in the consuming markets has a very powerful control upon obtainable rates. That influence of course is to remain with us.

In my judgment it is one thing to condemn a rate simply because it is excessive, and it is quite another thing to condemn a rate because it is discriminative.

The constitutional rights of the carriers in respect of their revenues would only permit the reduction of a rate where no element of discrimination enters except upon satisfactory proof that their revenues under the rate complained of were greater than they were entitled to receive, and that the reduced revenue which the lower rates would produce would still be all that they would be entitled to exact from the public; but where the element of discrimination enters, as the Supreme Court has said, neither the Congress nor the administrative body would be under quite the same limitations, because the carriers have no right, merely for the purpose of getting more revenue, to so adjust their rates as to unduly prejudice one community or give a rival community undue advantage.

While I agree with what Commissioner Prouty said, that the future question, the question the country is coming to presently, is the question of the reasonableness of the general basis of rates, the questions which so far have come up, excepting the recent one which has grown out of the raising of rates by changes in classification, with that exception the complaints have more generally been complaints of discriminations between localities or between different articles of traffic, and the grievance most commonly asserted is a grievance of that kind.

To illustrate, Mr. Chairman, the Commission conducted an investigation some four or five years ago which involved great interests, and that was the proper differential on grain originating, say, at Chicago, as a typical point, to Boston, New York, Philadelphia, Baltimore, and Newport News. What should be the adjustment of grain rates—the relation of grain rates from a common center to those different ports? That is a great question; but, as Commissioner Prouty said yesterday, somebody has to settle it, and the question is, Shall the carriers be free to settle it just as they see fit, no matter what consequences to the communities or to individuals may result, or shall public authority intervene to some extent and, under proper restrictions, control in a degree that judgment?

Now, let us see what this Interstate Commerce Commission has said upon this subject since the Supreme Court decision of 1897. In their first report after this decision the Commission, speaking of the gravity of the situation with which the Commission and the country was then and is still confronted as the result of this decision, says:

The aggregate freight money paid to the railroads of the United States during the year ending June 30, 1896, was $786,615,837, and this sum was contributed, for the most part, by the people. A very slight change in rates upon any of the staple commodities amounts to an enormous sum in the aggregate. In most articles of daily use the transportation charge is a large, and often the larger, part of the cost to the consumer. The freight rate may determine whether the Kansas farmer shall burn his corn for fuel or send it to market. The traffic manager may decree whether an industry shall exist or a locality flourish. It is not only the billions of dollars invested in railway properties which this question touches, but the prosperity and welfare of the people at large throughout the whole nation. It is certainly, both from the standpoint of the railway capitalist and the humblest citizen, one of transcendant importance, and we invite earnest attention to the actual condition as this decision leaves it.

Commenting upon the position taken by the Commission under the law prior to this decision, it further says:

It will be seen, therefore, that the Commission has never assumed to make the rate. It has assumed that it was charged under the act with the duty of determining whether the rate complained of was just and reasonable, and if found to be unjust and unreasonable, of correcting that violation of the statute. In doing so it has been assumed that the plain, and, in fact, the only way to do this was to prohibit the charging of the unreasonable rate and compel the charging of one which was reasonable. Of the 135 formal orders made in suits actually heard from its institution down to the present time 68 have prescribed a change in rate for the future.

And finally concludes what it has to say upon the subject of clothing the Commission with the power it was supposed to possess before this decision in these words:

The enactment of the act to regulate commerce was in obedience to a popular demand and to remedy admitted evils. The experience of ten years has demonstrated the necessity and justice of such an act.

Nearly every essential feature of that act has failed of execution. There is to-day, and there can be under the law as now interpreted, no effective regulation of interstate carriers. If there is to be under this act, it must be amended. From the best consideration we have been able to give the subject we believe that the most essential features of such an act must be those previously indicated.

A tribunal which regulates the common carriers by railroad of interstate traffic, which can stand for justice and fairness between these carriers and the people, must have the power to fix a maximum rate, to fix in certain instances a minimum rate, and its orders when made must mean something.

In its report for the year 1898 on this same subject the following language is used. It says:

This subject was fully discussed in our last annual report, and we are unable to add anything to the presentation then made. In that and previous reports we have not only set forth in general terms the necessity for amending the law, but have formulated and proposed the specific amendments which appear to us positively essential. With the renewal of these recommendations no duty of the Commission in this regard remains undischarged.

Meanwhile the situation has become intolerable, both from the standpoint of the public and the carriers. Tariffs are disregarded, discriminations constantly occur, the price at which transportation can be obtained is fluctuating and uncertain. Railroad managers are distrustful of each other and shippers all the while in doubt as to the rates secured by their competitors. The volume of traffic is so unusual as to frequently exceed the capacity of the equipment, yet the contest for tonnage seems never relaxed. Enormous sums are spent in purchasing business and secret rates accorded far below the standard of published charges. The general public gets little benefit from these reductions, for concessions are mainly confined to the heavier shippers. All this augments to the ruin of smaller dealers.

These are not only matters of gravest consequence to the business welfare of the country, but they concern in no less degree the higher interests of public morality.

Again, in its report for the year 1899, it substantially reiterates the same view. It says:

In its last annual report the Commission stated that attention had been called in previous reports to the vital respects in which the act to regulate commerce has proved defective and inadequate; that the present law can not be properly enforced, and that until further legislation is provided the best efforts at regulation must be feeble and disappointing. The requests of the Commission for needful amendments have been supported by petitions and memorials from agricultural, manufacturing, and commercial interests throughout the country; yet not a line of the statute has been changed and none of the burdensome conditions which call for relief have been removed or modified. The reasons for the failure of the law to accomplish the purposes for which it was enacted have been so frequently and fully set forth that repetition can not add to their force or make them better understood.

It is sufficient to say that the existing situation and the developments of the past year render more imperative than ever before the necessity for speedy and suitable legislation. We therefore renew the recommendations heretofore made and earnestly urge their early consideration and adoption.

In its report for 1900 it makes the following reference and comment:

With reference to further legislation the Commission has little to suggest and nothing new to propose. The subject has been fully discussed in previous reports to the Congress, and recommendations, both general and specific, have been repeatedly made. The reasons for urging these amendments have been carefully explained, and repetition of the argument at this time can hardly be expected. While the attitude of the Commission has been misunderstood by some and misrepresented by others, the views heretofore officially expressed are believed to be justified alike by experience and reflection.

They are confirmed by later and current observation. Knowledge of present conditions and tendencies increases rather than lessens the necessity for legislative action upon the lines already indicated and in such other directions as will furnish an adequate and workable statute for the regulation of commerce "among the several States."

In its report for 1901, after again repeating the language used in 1900, these further words were added:

These statements apply with added force to the present situation.

In repeating the views thus expressed, and referring again to what has been so often and fully set forth, the Commission believes that its duty in respect of recommendations is most suitably performed.

In its report for 1902, the Commission emphasize with more vigor than in any previous report the importance of some action. It says:

The tendency to combine continues to be the most significant feature of railway development. The facts in this regard are matters of common knowledge, and little is gained by the mention of particular instances. It is not open to question that the competition between railroad carriers which formerly prevailed has been largely suppressed, or at least brought to the condition of effective restraint. The progress of consolidation, in one form or another, will, at no distant day, confine this competition within narrow and unimportant limits, because the control of most railway properties will be merged in a few individuals whose common interests impel them to act in concert.

While this will insure, as probably nothing else can in equal degree, the observance of published tariffs, and so measurably remove some of the evils which the act was designed to prevent, the resulting situation involves consequences to the public which claim the most serious attention. A law which might have answered the purpose when competition was relied upon to secure reasonable rates is demonstrably inadequate when that competition is displaced by the most far-reaching and powerful combinations. So great a change in conditions calls for corresponding change in the regulating statute.

Continuing along this line it further says:

The fullest power of correction is vested in the Congress, and the exercise of that power is demanded by the highest consideration of public welfare.

Were it deemed possible to add weight to previous recommendations or to emphasize the need for their prompt adoption, this portion of our report might be greatly extended. It is not believed, however,

that this subject can be more forcibly presented or the situation more clearly explained than has been done in former reports. If the representations already made do not induce favorable action it is certainly not the fault of the Commission. A sense of the wrongs and injustice which can not be prevented in the present state of the law, as well as the duty enjoined by the act itself, impels the Commission to reaffirm its recommendations for the reasons so often and so fully set forth in previous reports and before the Congressional committees.

In the report of 1903, speaking of the Elkins law, which was an amendment of the commerce law of 1887, passed in 1903, and claimed at the time by its friends and the Administration to be entirely sufficient to cure all defects in the then existing law, the Commission said:

Valuable as this law is in the direction and for the purposes above outlined, it has added nothing whatever to the power of the Commission to correct a tariff rate which is unreasonably high or which operates with discriminating effect. It greatly aids the observance of tariff charges, but it affords no remedy for those who are injured by such charges, either when they are excessive or when they are inequitably adjusted. If the tariffs published and filed, as the law directs, are enforced against all shippers alike, the authority of the Commission to require such tariffs to be changed remains just as ineffectual as it was before this legislation was enacted. This is the point to which the attention of the Congress has been repeatedly called; this is the defect in the regulating statute which demands correction. In the previous reports this question has been frequently and fully discussed. We have been recommended at length upon the weakness and inadequacy of the law as its provisions have been construed by the courts. We have carefully pointed out the amendments which we deem essential, and explained in detail the reasons for our recommendations. We are unable to add anything of value to the presentation heretofore made. Our duty in this regard has been performed.

In its last report, for the year 1904, the Commission in a spirit of criticism and censure speaks of the long delays of suitable and appropriate legislation in this behalf, and of the increasing evils in consequence thereof. It says:

We said in our report to Congress for 1902 and 1903, and now repeat, that in view of the rapid disappearance of railway competition and the maintenance of rates established by combination, attended as they are by substantial advances in the charges on many articles of household necessities, the Commission regards this matter as increasingly grave and desires to emphasize its conviction that the safeguards required for the protection of the public will not be provided until the regulating statute is thoroughly revised.

Now, Mr. Chairman, here is a most remarkable concurrence of official opinion, extending over all the years since the Supreme Court decision of 1897, not only urging, but demanding some prompt legislation by the Congress to rehabilitate and vitalize the Commission with powers to meet the purposes of its creation; and yet we have been met, from time to time, when public agitation has forced the consideration of this momentous question to the forefront, with excuses and subterfuges disgraceful in the extreme. The importance of this question from the point of view of the farmer and producer has been fully presented by the testimony of the grand master of the National Grange, Aaron Jones.

Before the Interstate Commerce Committee of the House, in 1902, he said, among other things:

The management of railroads has been in the past, in some respects, regardless of the interests of the producer or the interests of the farmer in the classification of freight. They have made it prohibitory to market some products, so that they are absolutely worthless, because the producers are unable to pay the freight charges upon them. These charges are not in proportion to the cost of carriage, as we understand it. In cases of that kind it seems to me that the farmers ought to have a remedy, and that remedy ought to be provided by the National Congress. That remedy is, that when the Commission has examined a case clearly and fully and determined it, whatever their finding may be, the railroad companies must obey that finding and thereafter carry the product at the rate of the finding of the Commission until it has been reviewed and set aside by the courts. There is not any other protection that the farming interests of the country can secure. We are handicapped. The rapid combination and consolidation of these roads under a single management makes it more imperative at this time, and more and more forcibly is the necessity felt that we should have legislation such as we ask now than in any other period in our country's history, because we are absolutely at the mercy of the transportation interests of the country. Now, I want to say, as a farmer, that grain growing has ceased to be profitable from the fact of the excessive freights that are charged us.

These views were substantially reiterated by Grand Master Jones, in his testimony in the hearings before the Committee on Interstate and Foreign Commerce, reporting this bill.

In his speech a few moments ago the distinguished gentleman from Ohio, General GROSVENOR, whom we all so much admire, and who never fails to come to the rescue of the Administration as its most brilliant and able defender in case of attack or astute apologist when excuses are needed, took occasion in a spirit of invective and caustic criticism to say that the Democratic party, as was usual, is now found camping where the Republican party was camping yesterday, and that he predicts when the time for action comes that a large portion of the Democrats on this side of the Chamber would be found in the band wagon. The gentleman from Ohio is no less distinguished in his skill than in his ability to turn every advantage to his party, but in this instance he has been singularly unfortunate, as it seems to me. Now, what is the truth concerning the position of the two parties upon this question, Mr. Chairman? Let history answer. It is an undisputed fact that the interstate-commerce law of 1887 was the conception of a Democratic brain; that it was the product of the far-sighted statesmanship of Judge John H. Reagan, of Texas, then a Member of this House, and a Democrat, and although his measure for the creation of this Commission, after it had passed a Democratic House, was sidetracked in a Republican Senate, and another measure, bearing another name, but substantially the same, was substituted therefor, which was finally passed and became the law, yet the body and substance of that law was of Democratic origin.

Again, President Cleveland, in a message to Congress in 1896, nine years after the passage of the act, and about one year before the Supreme Court decision, referring to the operation of this law, said:

The justice and equity of the principles embodied in the existing law, passed for the purpose of regulating transportation charges, are everywhere conceded, and there appears to be no question that the policy thus entered upon has a permanent place in our legislation.

The Democratic national platform of 1900 declared:

We favor such an enlargement of the scope of the Interstate Commerce Commission law as will enable the Commission to protect individuals and communities from discriminations and the public from unjust and unfair transportation rates.

And the national Democratic platform of 1904 contained this expression upon this question:

We demand an enlargement of the powers of the Interstate Commerce Commission, to the end that the traveling public and shippers of this country may have prompt and adequate relief from the abuses to which they are subjected in the matter of transportation.

It in addition contained this further declaration:

Individual equality of opportunity and free competition are essential to a healthy and permanent commercial prosperity, and any trust, combination, or monopoly tending to destroy these by controlling production, restricting competition, or fixing prices and wages should be prohibited and punished by law. We especially denounce rebates and discriminations by transportation companies as the most potent agency in forming and strengthening these unlawful conspiracies against trade.

The Republican party, for reasons evidently largely political, not wishing to antagonize interests so powerful, in neither of its national platforms of 1900 and 1904 made any mention of the connection of railroad rates, rebates, and discriminations with the trust question.

In view of this conspicuous and eloquent silence of the Republican party—this bit of modern history—we can readily appreciate the rôle of humor essayed by our distinguished friend from Ohio [Mr. GROSVENOR] in his suave attempt to shield his party from just and merited criticism. Some gentlemen upon this floor have expressed grave doubts of the wisdom of this legislation. They seem to have fears that it will be the precursor of socialism and all of its attendant evils; that it is venturing upon dangerous grounds—invading the rights of private property and transcending the legitimate domain of Congressional action. I do not share this pessimistic view. If, however, I was inclined to doubt upon this question, I know of no one whose warning would command a greater share of my respect than the distinguished gentleman from Massachusetts [Mr. MCCALL]. His calm and conservative judgment and usually clear and convincing arguments are always regarded highly by this House. But in this instance I must confess some surprise at his prophecy of calamities that will follow if this proposed legislation shall be enacted into law. I must assume that the evils he predicts are born more of fancy than of fact. If I shared his fears and those of others who have expressed similar views, I too might hesitate.

But, sir, I believe that our future safety from the tendencies of socialism and other radical doctrines of which he speaks, instead of being threatened and endangered by this legislation, will be safeguarded and protected; that if there is one thing more than any other at this time generating in the minds of the people a suspicion and distrust it is the apparent indifference of the lawmaking power and those in authority to their reiterated appeals for justice and fair treatment. It is the slow and halting manner in which this great Government moves toward the redress of grievances long and patiently borne by the people. And if, unfortunately, the time shall ever come, as I sincerely hope it may not, when we will be confronted with the awful alternatives of social disorder and lawlessness, of which our friend speaks, it will not be the result of any initiative move or action upon the part of the people; at least not unless and until goaded and driven thereto by the defiant attitude of the forces of organized combinations of corporate greed and centralized wealth. I, sir, for one, will not permit myself to believe that such a crisis as this is at all probable. As long as American institutions shall be cherished and the blessings of liberty appreciated the future greatness, grandeur, and glory of this Republic is assured. I am neither dismayed nor discouraged by the occasional appearance of difficult, intricate,

and complex problems in our political system. The patriotism and statesmanship of the country have been more than equal to every trial in the past, and will prove no less masterful in the present and future to successfully meet and solve these mighty problems.

And here, Mr. Chairman, without assuming to advise, I would say it will be well for all men to yield obedience to the law of the land, and to all the requirements of the interstate-commerce act. They must be taught to understand that there is a power in this Republic that is greater than any one man or combination of men. They must learn that the welfare of the masses is paramount to any interests of theirs. They must be reminded that the people are wide awake, lest the portent of the centralization of great wealth through wrong and disobedience does not become a menace in the future. I have no sympathy with socialistic and communistic theories as the better solution of our national ills. I believe that that government is best which governs least along the natural pathway of good morals and permits the exercise of the greatest personal freedom to the individual consistent with the safety of society. I do not belive that the great business of the country ought to be directed by governmental agencies. I believe that equality of opportunity and untrammeled energy, working in their natural course, will insure the greatest prosperity and happiness to all. I am therefore as a Democrat, believing in Democratic ideas and theories of government, opposed to the centralizing tendencies of such movements, naturally out of sympathy with the agitation for governmental ownership of the great instrumentalities of commerce. But if these great agencies continue to combine, if they go on, the people will take council of themselves, and in self-defense will find some method to defeat them. This has been true in times past, and history will repeat itself if occasion demands.

We are told that in olden times, in the feudal days of English tyranny, the titled aristocracy of that realm—the baronial hierarchy of that land—owned a monopoly of all that was valuable, ruled and dominated the policy of state, and held in subjection the plebian masses; that kings levied and exacted tribute and wielded power for their selfish and personal aggrandizement. But the spirit of liberty, instinct in the human heart, even in those times, could not be crushed, and rose up in revolt and overwhelmed and smote the hand that forged their chains, and gave liberty to the people.

We have in this land many men to-day who, through the aid of special privileges—governmental favoritism—have amassed excessive wealth, in some instances ill gotten, the fruits of the spoliation of society, who possess more power than any feudal lord ever wielded, more power than any crowned head has ever had. We read of a Cromwell, an Alexander, a Napoleon, and recount their achievements with bewildering astonishment.

We have men who feel complimented when differentiated as Napoleons of American finance, Napoleonic generals in railroad and trust combinations, who by a word or a wink can add a cent to a gallon of oil, a few dollars to the price of a ton of steel, a small increase to the rate charged for transportation and reap a stolen harvest of hundreds of millions from the people. We have men, many of them, who alone can corner the food markets of the country, destroy the industrial business vocation of any rival at pleasure, and impose upon the community and society such exactions as their unhallowed greed may demand, and all the prayers and agonizing entreaties of their helpless victims may not stir them to pity. These men should recall how much they owe to society, how much they are indebted to the law, to the Constitution, for the protection of all they have and possess. They should remember that the people are the source of all power, that they make and unmake Constitutions and laws, that this is a land of equality, that the units of political power as symbolized by the ballots are equal.

The proposed measure of legislation, if enacted into law and faithfully and honestly administered, will, in my judgment, accomplish in a large measure the reforms sought, if it does not entirely exterminate all the evils complained of. The question with which this measure deals is purely an economic problem. It does not and should not belong to partisan controversy. Its consideration should be placed upon the higher plane of non-partisan legislation, upon the plane of what is best, just, and equitable for all concerned. The railroads have rights just as sacred and inviolable as the private individual—the private citizen, under the Constitution and laws of the land. They are entitled to the same consideration, the same protection to the full extent of these rights, as the private citizen, but not more. Both should receive absolutely fair and impartial treatment at the hands of Congress, and the law, when made, should be so framed as to afford ample security to both the people and the railroads. This, I hope, will be the effect of the present measure if it shall pass into law. A law that will secure a fair and equitable adjustment of the tariff rates of common carriers, with ample provisions for their enforcement through the powerful instrumentalities of governmental agencies, will of itself be a moral force and factor in coercing obedience thereto by the railroad corporations and carriers.

Railroads and other carriers subject to its provisions will endeavor to adjust themselves to the new rates fixed in all cases where such rates are reasonable. And we must assume that the Commission, composed as it is and will be of learned and capable men—men having expert knowledge of all questions arising before them—will exercise sound judgment and do what is right between the people and the carriers. It is not the purpose or design of this Commission, as has been contended by many railroad officials in their opposition to this bill, to have it step into the shoes of the directors and officers of the roads and arbitrarily assume control and management of the roads or arbitrarily fix the rates regardless of any profits to be made in their operation. Everyone knows that this could not lawfully be done. No tribunal can be authorized or empowered to deprive a corporation, any more than a citizen, of its rights of property without just compensation. And for the Commission to fix rates at a price that would deny to a railroad a fair and reasonable profit over and above all expenses of maintenance and operation would be a confiscation of the property and forbidden by the fundamental law of the land. But even if this could be done it would not be desirable. No sensible man would sanction such a proposition for a moment. The people are vitally concerned in encouraging, building, and operating these important agencies of commerce. They could not and would not dispense with them, and do not wish to embarrass them, and would not do so beyond a reasonable and fair regulation.

Therefore, Mr. Chairman, when the railroad officials insist that this proposition is a dangerous and revolutionary movement it may be safely assumed that the protest comes from corporation carriers who are not only exacting an extortionate rate, but want to be let alone to pursue unmolested this same practice in the future. It is a most arrogant and extraordinary assumption by railroads and carriers to say that the Government, having granted to them charters and clothed them with the extraordinary power of eminent domain by which they are authorized to appropriate to their use the private property of the farmer—and many other privileges not permitted to the private citizen—that it has no power to inervene in behalf of the citizen, in behalf of the people from whom they derive these great privileges, and prescribe reasonable and just regulations to protect them against their abuses. This argument is neither sound in principle or logic, and can find no justification in justice or good morals. Hoping, therefore, that this measure will be crystallized into law, I wish in conclusion to congratulate the President of the United States on his wisdom and courage in presenting this Democratic measure and forcing it on the attention of this Congress. I likewise congratulate the country on its good fortune to have the assurance even at this late day of the passage of such a Democratic measure as the Townsend bill.

Mr. DAVEY of Louisiana. Mr. Chairman, I yield to the gentleman from Alabama [Mr. HEFLIN].

Mr. HEFLIN. Mr. Chairman, I did not intend to make a speech during this short session of Congress, but when a question of so much importance to the people is up for consideration by this House, and representing as I do a section that has suffered from unjust discrimination by the railroads in the matter of freight rates, and realizing that this Democratic demand for relief is just and right, I desire to lift my voice in favor of this much-needed reform.

Some of the opposition tell us that this power should not be vested in an Interstate Commerce Commission, acting for all the people with a desire to do what is right and just in the premises, but that the railroads should be left to arrange the freight rates as best suits their cause and conscience.

I deny this proposition.

If the law can regulate the price of a man's time who is compelled to serve upon a jury in a civil case, neglect his private business and possibly causing him to lose money, it ought to have the power to regulate the price that a common carrier shall charge for transporting men and things from place to place. [Applause.]

If the law compels the citizen to leave his home and his business to attend court to give testimony in a civil case for a small sum per day, fixed by law, where private interests are alone involved, it ought certainly to be able to say to the railroads that this or that freight rate on this or that commodity is just and reasonable, and that it should charge that rate and no more. [Loud applause.]

I agree, Mr. Chairman, that the railroads are entitled to a fair return on the capital invested and the service rendered, but I do contend that as common carriers and public utilities they are not beyond the reach and regulation of this law-making body. The man who tills the soil, the bread earner and the wealth producer in this country, is entitled to the honest consideration of this House. These people have rights, as industrious, law-abiding citizens, in the struggle for an honest existence that entitle them to the respect and serious consideration of this law-making body. In other words, the working masses should be protected by us against the abuses and hardships thrust upon them by the unholy and avaricious demands of the lawless and monopolistic classes. [Applause.]

I deny, Mr. Chairman, that this Democratic measure seeks to destroy any legitimate enterprise. The Democratic party only wishes to see justice and fairness done between the people who own the railroads and the people who patronize and make rich the owners of the railroads. [Applause.] I insist with all the earnestness of my soul that these gigantic interests should be under the law and not above the law. The mighty rich have always opposed agitation and reform which sought to regulate them by the rules of right and the law of justice. [Applause.] How is it here to-day? The representatives of these frightened interests are trembling in their shoes—agitated, alarmed—because the Democratic party is demanding that this proposed legislation, this right of the people, be recognized by the law-making power of this nation, and that unjust and unfair freight rates shall exist no more in this country. [Applause.]

Aye, Mr. Chairman, the Republicans in the Senate stand ready, we are told, to put the death seal upon any measure that places power in a commission to fix just and reasonable rates for the railroads of this country. Nobody takes the Republican party seriously upon this question of regulating railroads. It is not their purpose to give to the people any genuine relief. They are trying to cripple and kill the Democratic effort to regulate in a spirit of fairness and justice these mighty corporate interests. [Applause.]

The proposition submitted by the majority in this House does not go far enough, and yet you have been urged to present a bill that would meet the demands of the people—the demands of right and justice—the Democratic demand. The gentleman from Ohio [Mr. GROSVENOR] says that the minority proposition does not go far enough. I say to the gentleman from Ohio that the minority leader in this House [Mr. WILLIAMS of Mississippi], several days ago, asked to be permitted to withdraw the minority bill upon this question, stating that he desired to amend it with provisions that would cover private cars, private terminal facilities, etc. And what happened then, let me ask the gentleman from Ohio? Why, objections loud and strong came from the Republican side of this Chamber.

Mr. BAKER. And from one of the sponsors of the bill of the majority.

Mr. HEFLIN. Yes; one of the fathers of the Republican makeshift; which goes only a little way and seeks to go a long way in deceiving the people.

Mr. Chairman, we shall put these facts before the country as they are; and if the House and Senate fail to give the relief prayed for by the people, we shall place upon the breast of the Republican party the scarlet letter of deceit and unfaithfulness to the American people. [Applause.] When we undertake to lay the hand of just and fair regulation upon the agencies of combines and monopolies, some of you are indignant and say they are private interests and are beyond our reach and control.

I deny this proposition. The plain people must obey the law, and when they violate it they suffer its pains and penalties; but under the reign of the Republican party trust magnates and monopolists flourish in evil doing in the face of the law and escape through a mass of technicalities the just burdens of government.

I am reminded, Mr. Chairman, of a little poem, found on the commons of England by an American tourist. It fits the occasion and represents the Republican idea of justice:

The law imprisons man or woman
Who steals a goose from off the common,
But lets the greater culprit loose
Who steals the common from the goose.

[Laughter and applause.]

I have heard gentlemen on the other side of this Hall, Mr. Chairman, claiming this Democratic doctrine as the product of the Republican party, and I have been amused at the gentleman from Ohio [Mr. GROSVENOR] claiming that where the Republicans camped last night the Democrats were camped to-night. I would inform the gentleman that the record does not bear out his statement. The Democratic party has time and again demanded this reform in its platforms, as was so eloquently called attention to by the able gentleman from Kentucky [Mr. JAMES]. The last Republican platform was as silent as the tomb on this subject. The President himself, sometimes accused of writing that platform, certainly revised it, and knew what every line contained. That platform was silent upon this great question—a question that the Daniel of Democracy, William J. Bryan, has so earnestly advocated before the people of this country. [Applause on the Democratic side.]

This is not the first and only time the Republicans have come to our position. In the campaign of 1900 Mr. Bryan said that the trust magnates should be subject to the law and imprisoned for violating any of its provisions. Senator FORAKER, of Ohio, a Republican, in the same campaign said that the Democratic speakers who urged the imprisonment of trust kings for alleged violations of the law ought themselves to be put in the penitentiary.

To show you how the Republicans have come to this Democratic position, I quote an editorial from the Philadelphia Inquirer, a Republican paper:

PROSECUTE THE BEEF TRUST.

If there is such a thing as a "criminal trust," the beef trust fills the bill.

That trust has used its vast power, gained by rebates from the railroads, to lay violent hands upon the food of the people and to fix prices at will. It has played both ends for its sole profit. It has refused fair prices to the cattle raisers and has sold the product of its packing houses at high prices to the consumers.

The growth of the trust, as we have said, is due to the railroads. It might be difficult to prove that an actual rebate has been given for transportation, but the trust houses have received what is practically a rebate. They have built their own private cars, they have constructed their own private side tracks, and they have demanded and received pay from the railroads for the use of these private cars and tracks. The packing house not in the trust has been refused such benefits, and as a rule has been forced to sell out or join the combination. It would be impossible, under the conditions that have obtained, for an independent firm to start a new business and prosper.

Judge Grosscup long ago granted an injunction against the trust, restraining it from committing acts of conspiracy in restraint of trade. That injunction has just been made permanent by the Supreme Court. Apparently the trust has paid no heed whatever to the Grosscup ruling. If this is so, if it defiantly went about its business as an organization or by general agreement to control the market, then it has rendered itself liable to criminal prosecution.

It is believed that President Roosevelt contemplates such prosecution. If he finds ground for action, he will be heartily commended if he pushes it to the legitimate finish. With prison threatening them there would be some regard for law hereafter among the beef conspirators.

Verily I say, Mr. Chairman, the Republican President and a few of his following are coming to Mr. Bryan's position and are advocating Democratic doctrine. [Applause on the Democratic side.]

In conclusion, Mr. Chairman, I am of the opinion that one of the greatest wrongs now committed by the railroads is the favoritism shown by them through the rebate system. The man or firm who enjoys such a discrimination can easily dictate terms or destroy any rival concern, and instead of encouraging competition it strikes it dead on the field. The private-car system has been too long neglected. A trust car commands a rental from the railroad company, which is another way of obtaining the benefits now enjoyed by many through the rebate system. So the private-car system must be regulated by law. Fair play and honest competition lie dead in the wake of these evil practices. [Applause.] We claim the right to regulate these great corporate interests, and we will regulate them sooner or later. And to the Democratic side of this House I will say, Let us despair not. Our cause is right, and in the language of William Jennings Bryan, "No tomb is strong enough to hold a righteous cause." The people claim the right to regulate all the interests of this country, the large as well as the small. [Loud applause.]

Mr. DAVEY of Louisiana. I yield to the gentleman from Texas.

Mr. GREGG. Mr. Chairman, in the short time allowed me I can not hope to discuss, or even touch upon, more than one phase of the pending legislation. The evils complained of seem to be admitted by all, and the lawful authority of Congress to deal with them in the manner proposed by both bills is conceded by all, so there is no necessity for discussion along those lines.

The Republican members of the committee have presented one bill and the Democratic members have presented another. Both bills vest the railroad Commission "with the power, where a given freight rate has been challenged, and after full hearing found to be unreasonable, to fix a reasonable rate to take its place."

But do both bills provide, in the language of the people's demand and the President's message, that the reasonable rate found and fixed by the Commission shall "at once go into effect and stay in effect unless and until the court of review reverses it?" The requirement is not that it shall stay in effect unless and until suspended by a temporary restraining order, which is interlocutory, but that it shall "stay in effect unless and until

reversed"—reversals are the final orders of a court after trial, not interlocutory restraining orders.

Whichever of the two bills meets both of these requirements should receive the indorsement of the people, of the President, and of this House. Of the people and the President because they demand both, of this House because we are but the servants of the people and should respect their demands.

Mr. Chairman, this legislation is in response and in obedience to the demands of the American people, which have for years been expressed by them in unmistakable terms. Not by the prejudiced and uninformed, but by those who have had to deal with the conditions complained of, and who know their every detail, and who do not wish to injure the railroads, but who only ask for a square deal. It has been demanded in every annual report since 1897 by the Railroad Commission, the very tribunal established for the express purpose of recommending remedial legislation in the interest of the people. It was demanded by the National Association of State Railroad Commissioners first in 1901, and that demand was repeated in 1902; it has been demanded by the National Grange; it has been demanded by numerous State granges; it has been demanded by the National Live Stock Association; it has been demanded by the resolutions of eight State legislatures; it has been demanded by nearly 500 of the leading commercial and industrial associations of the country; by the National Board of Trade; by the Grain Dealers' National Association; by the National League of Commission Merchants; by the Millers' National Association; by local organizations in forty-three States and Territories, and last, but not least, by the Democratic party, first in its platform of 1900, and again in its platform of 1904.

Gentlemen upon the other side, some of whom would claim Republican authorship of the Sermon on the Mount were there any chance to becloud its real authorship, seem disposed to give to the President the entire credit for the initiation of this law. Why, Mr. Chairman, as I have before shown, the demand for this law was coming up from the American people all over this land long before the President ever opened his mouth upon the subject.

While I can not under the facts give him credit for initiating the legislation, I do give him the exclusive credit of making it possible for it to be enacted at this time. He has a Democratic ear which hears the expressed wishes of the people, and a Democratic heart which responds to and respects their wishes, and he, by reason of his position and power with the Republican party, has been able to repeat this almost universal demand into the ears of the Republican party with such power that that party is bound to hear and heed.

Mr. Chairman, if this whole proceeding is not intended merely as a sham for the purpose of deluding the American people, and if there is, in fact, any purpose in the legislation under discussion, it should be to meet the demands of the people of the United States and the urgent demand of the President in his last message upon two propositions. The one is that the power of the Interstate Commerce Commission shall be so increased as to give it power to fix a freight rate reasonable and just in lieu of a rate found by it to be unreasonable and unjust. The other is that the rate so substituted shall go into immediate effect and remain in effect until reversed and set aside by the final decree of some competent judicial tribunal. There is no relative importance between these two propositions. The one is just as important as the other. The demand of the people throughout this country and of the President is just as insistent upon the incorporation of the one into the law of the land as it is on such incorporation of the other. Now, if the bill formulated and reported by the Republican majority does not accomplish both of these purposes it falls short of what it should effect. The people have asked for bread and you have given them a stone. [Applause.]

Does this bill of the Republican majority meet the demand that the substituted rate fixed by the Commission shall go into immediate effect and remain in effect until set aside by the final decree of some judicial tribunal?

Let us examine it—let us analyze it. It will not take a very close examination, nor a very thorough analysis, to convince anyone that if this bill had been framed for the express purpose of providing the means to prevent the rate fixed by the Commission from taking immediate effect and remaining in effect "unless and until reversed by the court" it could not, either accidentally or designedly, have been better framed to accomplish that result. The very first section provides as follows:

> And the order of the Commission shall, of its own force, take effect and become operative thirty days after notice thereof has been given to the person or persons directly affected thereby.

If it had stopped there it would have accomplished the purpose demanded by a fair and candid response to the wishes of the people and of the President. It does not stop there, but further provides as follows:

> But at any time within sixty days from date of such notice any person or persons directly affected by the order of the Commission, and deeming it to be contrary to law, may institute proceedings in the court of transportation sitting as a court of equity.

Instead of the rate fixed going into immediate effect, if the roads are aggrieved or not satisfied with it they can apply to the court of transportation as a court of equity. Restraining orders and injunctions, and similar remedies, are the very right arm of a court of equity. Had it not been for the desire and the necessity for the exercise of such jurisdiction courts of equity would never have been established.

There is no limitation upon the character of the proceeding to be brought. They can apply to that court as a court of equity and ask from it all the ordinary equitable relief, both temporary and final, usual under the forms of equitable procedure. The result will be that in every instance where a rate is promulgated by the Commission the roads will apply to this transportation court, and the first order will be a temporary restraining order to prevent that rate from going into effect until after the final action of that court.

That is not all. Section 7 provides as follows:

> There is hereby created a court of record, with full jurisdiction in law and equity, to be called a court of transportation.

That carries with it, of course, the exercise of general equity powers, which includes the power to issue temporary restraining orders. And that is not all. In defining the jurisdiction of that court it provides, in section 10, as follows:

> And it shall also have exclusive original jurisdiction of all suits and proceedings of a civil nature in law or equity brought to enforce obedience to, or to restrain, enjoin, or otherwise prevent the enforcement and operation of any order, ruling, or requirement made and promulgated by the Interstate Commerce Commission.

Here is granted to that court the express power to grant a temporary restraining order to prevent the rate fixed by the Commission from going into effect the very moment the proceeding is filed with the court.

He who claims that the effect of this bill will be to put that rate into immediate effect is either deceived himself or is trying to deceive the Members of this House and the American people. [Applause on the Democratic side.]

That is not all. It not only permits the issuance of temporary restraining orders, but permits their issuance without first giving notice to the Commission. Section 14 has two provisions. One relates to the court and provides as follows:

> That the court of transportation, as a court of equity, shall be deemed always open for the purpose of filing any pleading, including any certification from the Interstate Commerce Commission, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings, including temporary restraining orders, preparatory to the hearing upon their merits of all causes pending therein.

This much relates to the powers of the court as a court, and clearly provides for the issuance of temporary restraining orders without any notice. The remainder of that section relates to the power of a justice of the court in chambers, and is as follows:

> And any justice of the court of transportation may, upon reasonable notice to the parties, make and direct and award at chambers, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, including temporary restraining orders, wherever the same are grantable, as, of course, according to the rules and practice of the court.

Under this one of the justices in chambers can not grant a temporary restraining order, except upon reasonable notice to the parties. I don't know why this provision was inserted, unless for the purpose of basing upon it the contention that temporary restraining orders could not be granted in any case except upon reasonable notice.

Those of us who know anything about the practice pursued in all cases where railroads have attacked the action of State commissions in fixing rates, know that the first step has always been the obtaining of a temporary restraining order to prevent the rate fixed from going into effect until after the final judgment of the court, and no one can doubt that such will be the action taken in every case where the rate fixed by the United States Railroad Commission is to be attacked, thus leaving the people, during a long-drawn-out litigation, to pay the rate declared to be unfair and unreasonable.

On the other hand, the bill which the Democratic side of this House will offer as a substitute does clearly and unmistakably provide that the substituted rate fixed by the Commission shall go into immediate effect and remain in effect unless and until it shall have been set aside by the courts. It leaves nothing to interpretation or construction, but is so plain "that he who runs may read," and "the wayfaring man, though a fool, need not err therein."

Under the Republican bill the inconvenience and loss growing

out of the delays of litigation are to be borne by the people, who are the least able to bear them, while under the Democratic bill the inconvenience and loss growing out of the delays of litigation are to be borne by the railroad companies, which are the most able to bear them. While the Democrats do not desire to injure the railroads and do not believe that any injury will be done them, they say if either the people or the railroads must suffer temporary inconvenience or loss, let it be the railroads. The Republicans say if either the people or the railroads must suffer temporary inconvenience or loss, let it be the people.

The bill we will offer as a substitute meets the full demand of the people and of the President, and we on this side of the House will vote for it, but if we can not get the whole loaf we will take the half loaf offered by the Republican party.

Mr. HEPBURN. I yield to the gentleman from New York [Mr. VREELAND].

Mr. VREELAND. Mr. Chairman and Gentlemen of the Committee, during the six years that I have had the honor to be a Member of this body I believe this is the first time I have found myself out of sympathy with the majority upon this side of the Chamber in reference to important legislation. In the little time I have at my disposal I do not seek to discuss the details of this bill nor criticise its provisions. I can do no more in the brief time at my command than give to my associates some idea as to why I have found myself unable to vote for the adoption of the rule for bringing this bill before the House, and why I shall not be able to vote in favor of its pasage.

I have hesitated to take any time from those who are actually discussing the details of this bill, and should not do so were it not evident that all of the twenty hours of discussion poured out in this Chamber will not change one line or syllable in this proposed legislation. The object of debate is supposed to be for the purpose of perfecting legislation, but we all know that at 3 o'clock to-morrow afternoon the ax will fall and this bill will become a law, so far as this body can make it a law, without the change of a line or a syllable or a letter as brought into this House. What object then is there in all these hours of debate that are being poured out here? They certainly will not have any effect whatever in relation to the form or substance of this bill. They may, indeed, furnish a rich field, where the boys throughout the country who are having debating societies can search for nuggets of wisdom when they take this subject up. It may be, perhaps, that the grave and reverend seigniors at the other end of the Capitol may glance through these debates when the bill reaches that body to see if they can find some light that has been shed on the subject of this discussion.

And yet, Mr. Chairman, I do not oppose the rules of this House. I believe in those rules. I am more in favor of them, perhaps, than the distinguished chairman of the committee from which this bill comes, because I remember that in my earlier days in this body I have on occasion heard him offer some objection to these rules, proper objections perhaps, as concentrating too much power in the hands of a few men in this great body. But, Mr. Chairman, I believe in our rules. I have no fault to find with the rule which puts through this legislation. I believe the party in power has the right to carry out its wishes and to be responsible to the country therefor. In a legislative body the size of the House of Representatives we must make our choice between a limited despotism on the one hand and chaos on the other, and as this body is organized every two years, the despotism here, which we ourselves enact, is limited by the fear of political assassination. But I insist, Mr. Chairman, that when we bind ourselves with the mighty power of organization, which we have on this side of the Chamber, when we adopt the rules which prevent the change of a letter in this bill as brought into this House, it ought to make us careful as to what legislation we bring in. We ought to be very sure when, as in this case, a change is made in the vital law of the country, as I believe, when it changes the very essence of our national life; we ought to be careful that such legislation has the fullest examination of those who bring it in here and invoke the rules and power of the organization in this body; such legislation should have the fullest examination here, and it should have full and intelligent examination before the country. We should be very sure that the great party that has commissioned us to sit in this body is in favor of such legislation as is proposed in this bill before we bring it here and invoke the party caucus and rules of this House to put it on its passage.

I stand here to say, Mr. Chairman, that in my belief this is not Republican legislation. I stand here to say that it is not, in my judgment, Republican doctrine. I am in favor, and I think the party to which I belong is in favor, of the fullest regulation of railroads under the powers given to the Congress by the Constitution, but I declare to you, Mr. Chairman, that this bill is not regulation of railroads, but from my point of view it is confiscation of one-sixth of the taxable property that exists in the nation to-day. When you take out of the hands of the owners of $12,000,000,000 worth of property the right to say what they shall receive for the use of that property, I declare that in my judgment it goes beyond any just conception of regulation and becomes confiscation of the property from its owners. We talk about its being a step toward socialism. In my judgment it is socialism. It would be much better, much fairer, for us to buy the railroads of this country and pay the owners therefor a fair and reasonable price than to leave the burden of caring for these railroads, the burden of their management, the burden of paying dividends to their stockholders along the present lines, and take away from their hands the right to fix the price for which they may sell their transportation. I declare that in my judgment it is not Republican doctrine. I challenge any man to find in any Republican national platform any declaration which says that the Republican party proposes to take out of the hands of the railroads, or any other body of our citizens, the right to fix the price for which they may sell the products they have to sell.

Mr. Chairman, I heard many eminent speakers of the Republican party address the country upon the campaign issues in the last campaign. I heard the distinguished Speaker of this House, in his trip through New York State, make an exhaustive, able, and comprehensive review of the questions at issue before the country and the purpose for which the Republican party would use its power if it were again confided to its hands, and in all that long and able discourse by the Speaker of this House, and I have never heard a better political discourse, I heard no declaration that if we were returned to power we would use that power to take out of the hands of the owners of $12,000,000,000 worth of property the right to fix the price for which they should sell the use of that property. The President of the United States issued a letter, Mr. Chairman, in accepting the nomination that was tendered to him by the Republican party last year. I heard many Republicans say they would be willing to go before the people of this country upon the issues raised and the policies outlined in that letter if not another word should be said, but, gentlemen, you will search that letter in vain to find any hint of the purpose of the President or his party to take over and away from its owners their property and to give to a Government commission the confiscatory power which is proposed in this legislation. I heard the distinguished chairman of the committee from which this bill comes, the gentleman from Iowa [Mr. HEPBURN], speak during the last campaign. No man knows how to present better or more ably and forcibly the doctrines of the Republican party. Yet nowhere in the course of his speech was there any hint given to his audience or to the country of any purpose on the part of the Republican party to take away from the owners of the railroads of this country the right to fix the price for which they were willing to sell transportation, and so I say, sir, that I decline to recognize this as Republican doctrine.

I decline to recognize it as having ever been incorporated into the policies or doctrines of the Republican party. The distinguished leader upon this side of the Chamber, the gentleman from New York [Mr. PAYNE], seeks to break the force of this objection by saying that for ten years, from 1887 to 1897, this great power of fixing the rates for which goods and passengers should be carried by railroads was exercised by the Interstate Commerce Commission. Mr. Chairman, I am unable to find that he is exact in making this statement. My information is that it is not a correct statement of the powers ever assumed or exercised by the Interstate Commerce Commission. My information is that after the Interstate Commerce Commission was created, in 1887, they made no claim, for several years at least, that they had any such power lodged in their hands. Not only that, but they specifically declared that no such power was lodged in their hands by the interstate-commerce act. Chief Justice Cooley, a member of this Commission, and acknowledged, I think, to be the ablest man who has ever been a member of that Commission, said, in relation to the fixing of rates by the Commission:

> In a country so large as ours, with so vast a mileage of roads, it would be superhuman. A construction of the law which would require the performance would render the due administration of the law altogether impracticable, and that fact tends strongly to show that such a construction could not have been intended.

Several years later, however, for the purpose of testing the law, the Commission attempted to exercise the power to fix rates over the railroads of the country. The railroads immediately objected to this power, took it to the courts, and the courts decided that that Commission did not have the power to fix the rates, so that this power to fix rates never has been vested in nor exercised by the Interstate Commerce Commission.

Mr. Chairman, I do not appear as a champion of the railroads. I never owned directly or indirectly a dollar's worth of stock or bonds in any railroad corporation. I have no acquaintance among officers and managers of railroads. I have ridden upon railroad passes, but not to a greater extent than those who are voting in favor of this measure; and I may say in passing that I shall welcome the day when no member of a legislative body in this country will ride upon railroad passes.

I have no personal interest of any kind in railroad legislation. My objection to the bill is entirely upon principle. I am opposed to socialism and populism. I am opposed to any unnecessary interference by the Government with the business of the people. I am opposed, at least upon a week's notice, to the assumption by the Government of the right to fix the price for which the people of the country may sell their property. I doubt very much whether we have a legal right to do so, and am sure we have not the moral right. I think it is contrary to that provision of the Constitution which prohibits the taking of property except by due process of law and for just compensation. To me it appears that when we take away from the owners of property the right to fix the price for which they are willing to part with it, or with its use, we take at least a portion of the property and may entirely destroy its value.

Mr. Chairman, as I have stated before, I believe fully in the right of Congress to regulate interstate commerce, including railroads, but I disagree with the advocates of this bill as to what regulation means. The authority under which Congress acts is contained in Article I, section 8, subdivision 3, of the Constitution, which says that Congress shall have "power to regulate commerce with foreign nations and among the several States." Gentlemen say that railroads differ from other forms of property which make up interstate commerce because the people who build them must first secure charters and they are given the right of eminent domain, but, sir, they have received no charters or right of eminent domain from the Government. These rights were derived from the States. Our sole power to regulate is derived from the section of the Constitution which I have quoted. We have many examples, both in national and State law, showing what regulation means. The pure-food bill, which passed this House at the last session, is an example of interstate-commerce regulation, but we did not attempt in that act to fix the price at which the articles affected thereby should be sold. In the State of New York we have regulation of factories. The law says that they must be equipped with fire escapes; they must be put in sanitary condition; but we do not attempt to fix the price at which their products shall be sold. In cities they regulate the material of which buildings shall be built and their height. No one would think at present of invoking a law fixing a price for which such buildings should be rented. These are examples of regulation within the proper meaning of the word and of the power given to Congress by the Constitution, as I understand it. But if we assume that under the power to regulate interstate commerce given to Congress by the Constitution there is no question of the right to fix the price for which railroads shall sell transportation. If Congress once assumes this power, I ask where will be the line at which we shall stop? If Congress has the right to say for what price meat shall be carried to market it has the right to say for what price the meat shall be sold when it reaches the market. Why should we not regulate the price of meat when it becomes interstate commerce? Nearly all of the arguments that are urged in favor of this measure may equally well be urged in favor of fixing the price of meat.

Mr. SHACKLEFORD. Does not the beef trust regulate that now?

Mr. VREELAND. Perhaps they do. If that is true, we could justify regulating the price of meat by saying that it is in the hands of a combination, and that there is no free competition in the sale of meat.

Mr. Chairman, it is my judgment that when we cross this line there is no logical place to stop. Why not fix the price of coal? It is an article of absolute necessity in our northern climate, and claim is made that it is sold at an exorbitant profit. Why not fix the price of clothing, of furniture, and finally of all of the necessaries of life that make up our interstate commerce? Gentlemen may stand here and believe themselves conservative because they are willing to stop at fixing the rates for which commodities shall be carried on the railroads, but I say to you that in some future time, when some wave of hard times or depression shall sweep over this country, these chairs may be filled by another set of men who will not have the scruples you have here to-day in crossing the imaginary line that exists between fixing the price at which railroads shall carry the products of the country to market and fixing the price at which all of the staples and necessaries of life shall be sold when they get to market. It is no more the business of the Government to furnish transportation of the necessaries of life which comprise interstate commerce than it is to furnish the necessaries of life themselves. These are the realms of socialism, and if the Republican party, the conservative party of the country, sets this great precedent by giving to the Government the right to fix the price at which transportation shall be sold, why shall not those who may come after us, and who may be more radical and more socialistic in their tendencies, use that precedent and invoke the same power to fix the price of other necessaries of life?

What evidence is there that the people are demanding that the Government shall assume the rate-making power on railroads? It is true that Mr. Bryan has expressed the conclusion that the country should own the railroads, but I assume that he meant that we should take them and pay for them. The Populists of the country would like to have the Government buy the railroads, and I have no doubt would approve of taking from them the right to fix rates, but the Republican party, which always carries out its pledges to the people, has never advocated either Government ownership of railroads or the fixing of rates upon railroads by the Government.

My information is that the rates of the country, as a whole, are not complained of. Freight and passengers are carried cheaper in the United States than anywhere else on earth. Our freight rates are one-third of those of England and France, and one-half those of Germany, where the Government owns the roads. The railroad rates of this country have steadily decreased. In 1870 the average earning per ton per mile of the railroads of the country was 1.990 cents. In 1903 it was 0.763 cent. That is, the earnings per ton per mile for carrying freight in 1903, for the whole country, was a little more than one-third of the amount charged in 1870.

Many shippers, in the hearings before the Interstate Commerce Committee of the House and Senate, declared that the rates in themselves were not a subject of complaint. The reports of the Interstate Commerce Commission indicate the same thing. It has several times discussed in its reports "unreasonably low rates." (See Annual Reports for 1893, 1894, and 1897.) In its annual report for 1893 the Commission stated that—

> To-day extortionate charges are seldom the subject of complaint. We are not troubled with the question (under consideration in England) that rates are too high. It is significant that during the period of commercial development and railroad extension, which have brought communities into such close business relations and made slight differences in transportation rates on competitive commodities a matter of serious import, there has been, under the operation of the interstate-commerce law, a steady decrease of complaints based on charges unreasonable in themselves. The concession is quite general among shippers that, with some exceptions, rates, as a whole, are low enough, and they often express surprise that the service can be rendered at prices charged.

In its annual report for 1898, the Commission said:

> It is true, as often asserted, that comparatively few of our railroad rates are unreasonable in and of themselves. The cases are exceedingly rare in which unreasonableness has been found merely in the amount of rate itself as laid upon the particular traffic and distance it was carried.

In 1898 the chairman of the Interstate Commerce Commission testified before the Senate committee that the question of excessive railroad charges—"that is to say, railroad charges which in and of themselves are extortionate is pretty much an obsolete question." What is it, then, that the people are complaining of about the railroads? What is it they are asking us to cure?

Mr. Chairman, the people are complaining of unjust differentials and discriminations. They are complaining of rebates and secret rates lower than the published rates; of concessions to owners of private cars; of small terminal switches, a thousand or two thousand feet long, which are called railroads by their owners, who demand concessions for freight run over them. It is generally understood that the Standard Oil Company laid the foundation of its fortune with rebates received from railroads. People demand that all men doing business with railroads shall have what the President calls "a fair deal;" that large shippers and little shippers shall stand on the same footing under like conditions. He asks for an instrument with which to strike down rebates. Mr. Chairman, I am in favor of giving to the President any necessary power to suppress these evils. They fall within what I understand the Constitution to mean when it gives Congress the right to regulate interstate commerce. Here we are upon a sure footing. Here we are carrying out Republican policies. There are already laws upon the statute books for the correction of some of these evils. If there be need, using the light of experience, let us make them stronger, but why is it necessary to venture into the dark unknown of Government rate making in order to do this? What

evidence is there that Government rate making would correct these evils?

Gentlemen say that the rates would be published; but they are published now. Gentlemen say that discriminations and rebates would be criminal; but they are criminal now. The trouble is that by means of private car lines, terminal switches, "midnight rates," and other similar devices the law is evaded. Could not rebates be given as well if the Government published the rates as at present, when the railroads publish the rates? Mr. Chairman, I object to the bill under consideration because it will not, in my opinion, reach the evils complained of by the people. I object to it because it takes away from private owners of a vast amount of private capital at least a portion of its value without due process of law or just compensation. I object to it as a precedent fraught with danger under our system of Government. Civilization has been built upon the security of private property. Capital and enterprise are not found where vested rights are not safe. Railroads have been built by private capital. They are owned by private capital; the savings of the people have gone into them. Life and fire insurance companies, savings banks, and estates own large portions of the railroad stocks and bonds of the country. A blow struck at railroads which will depreciate the value of their properties affects hundreds of thousands of our people directly and millions of our people indirectly. Gentlemen say that by means of combinations and agreements competition has ceased among railroads. The decisions in the Northern Securities and Beef Trust cases show that there is ample law now on the statute books to prevent illegal combinations in restraint of trade. Competition has not ceased among railroads. It has changed, but it exists in a wider form then ever before. Competition may not exist between roads running from Chicago to New York as to the price of carrying a bushel of wheat, but competition exists on a gigantic scale between systems and groups of railroads as to whether the wheat shall go to New York, or Baltimore, or Galveston, or to New Orleans. Competition exists between great systems as to whether the forests of the South or of the far West shall supply lumber to the Eastern market.

It is admitted that we have the most magnificent system of railroads in the world. Railroad men from other countries are constantly coming to our shores to study and imitate our methods. The 1,300,000 men employed upon our railroads receive more than double the wages paid in other countries. The railroads of this country pay much more for coal, iron, ties, and all the supplies necessary for the building and maintenance of railroads than they do in other countries, pay twice as much for labor, and yet the freight rates, as I have stated, are one-half and one-third those of other countries. The development of this continent during the past fifty years has filled the world with amazement, and I suppose no one will question that the railroads have been the most important single factor in this development. We have become the richest people in the world, and in no other country is wealth so equitably distributed. In no other country do so many people own their own homes. In no other country are the people so well fed, so well clothed, so well housed, so well educated as in this country; and we have achieved this position at the head of the nations of earth under our present railroad systems, with all the faults which are alleged to exist. If the railroads had held back the development of the country by charging exorbitant rates, or if exorbitant returns had been made upon capital invested in them, we could better justify ourselves in seizing the rate-making power from the hands of their owners; but the facts are exactly to the contrary. It seems to be the fact that the capital invested in railroads, as a whole, has not received to exceed 5 per cent return. The rich prairies of Iowa, of Nebraska, of the Dakotas, of Kansas, and the hidden riches of the mining States would still be comparatively valueless except for the enterprise of the men who built railroads through them. Yet the returns to the owners of these lands and mines have been vastly greater than to the owners of the railroads.

Mr. Chairman, it is said that the President desires this legislation. I have faith in the sincerity, the patriotism, the intelligence of Theodore Roosevelt. I have been amused at the enthusiastic praise which has been showered upon him by our Democratic friends. They say it is because he is now advocating Democratic principles. Is that the reason? Not at all. It is because the President has declared that he will not be a candidate for reelection, and they know that Theodore Roosevelt never lies. If it should come to their ears that he had reconsidered and would again lead the Republican hosts to victory, he would again become in their eyes the Rough Rider, the man on horseback, the man who would trample upon the Constitution, the man who would embroil us in wars with other countries.

Mr. Chairman, I am in accord with the President upon every material policy which he has expressed, although I may differ as to some of the details of carrying them out. The latest utterance of the President, relating to the regulation of railroads, is in his Philadelphia speech, as follows:

> The details must rest with the lawmakers of the two Houses of Congress, but about the principle there can be no doubt. Hasty or vindictive action would merely work damage; but in temperate, resolute fashion there must be lodged in some tribunal the power over rates, and especially over rebates, whether secured by means of private cars, of private tracks, in the form of damages, or commissions, or in any other manner, which will protect alike the railroad and the shipper, and put the big shipper and the little shipper on an equal footing.

The President cautions us against hasty and vindictive action. He says the details must be left to the lawmaking power, where it belongs under the Constitution, but that in some manner we should correct the abuses about which the people complain, to the end that every man, or corporation, or company, rich or poor, great or small, shall receive the same treatment from railroads under like conditions.

I am willing to assist in writing into the statutes of the land any law which is needed to achieve this result, but for reasons some of which I have briefly stated I do not believe that the pending bill is a remedy for the abuses which we wish to cure, while it strikes a damaging and unnecessary blow at one of the greatest business interests of the country. Many of my colleagues have stated to me that their opinion of this bill is the same as my own, but that they will vote for it in the belief that it will fail of passage in the Senate. Mr. Chairman, I have no criticism to offer upon the vote of any other Member; but, as a general principle, I think we should not permit any measure to pass this House which we are unwilling to stand for as a law of the land. To quite an extent the conservative people of this country have come to rely upon the Senate for protection against hasty of ill-advised legislation, because too frequently the House has responded to a passing clamor which did not represent the sober second thought of the people. Many Members have stated since this debate began that this is one of the most important and far-reaching matters presented to Congress since the civil war. If this be true, what exact information have we at hand to enable us to pass upon a question of such magnitude? Even this debate is valueless for practical purposes, because we must pass this bill, under the rule, exactly as it came into the House—without the change of a word. It has never been an issue before the people. Few of the Members have had a chance even to read the hearings before the Interstate Commerce Committee. In these closing days of this short session, with many appropriation bills yet pending, with the Swayne trial taking up a large portion of the remaining time of the Senate, it is evident that no proper consideration can be given to this bill at this session. Let us appoint a commission to investigate this subject during the summer and collect together all the facts necessary for intelligent and farsighted action by Congress.

Believing as I do that it is both morally and legally wrong to take from the owners of railroads the right to fix the price at which they are willing to sell transportation, I have not touched upon the practical workings of a commission clothed with this power. I have time only to touch on this phase of the question, but I believe the practical workings of the Commission having this enormous power would be disappointing in the extreme to the country. I have already quoted Judge Cooley, one of the early commissioners, who said that in a country so large as ours, with so vast a mileage, the task of fixing rates by a commission would be superhuman. The present rates are a growth resulting from years of experience. They are made by hundreds of men, each with a limited field which he has studied until he knows it perfectly. They are constantly changing to meet changing conditions. The making of rates for vast railway systems is not a simple matter, but one of the most intricate and complex character. There are millions of separate rates in existence. The change of one usually means the change of hundreds of others to correspond. Where can we find men, through political channels, capable of performing this gigantic work? A majority of the Commission would be appointed by each succeeding President. They would be subject, then, to the varying currents of political opinion. This in itself would produce a condition of uncertainty most harmful to business. Such a commission would lack the flexibility necessary to the proper handling of business. It must proceed along rigid lines of precedent. It would encounter constitutional difficulties. Nearly every town of any size, inland as well as upon the seacoast, has been made a port of entry by Congress. The Constitution says that there must be no discrimination between the ports of different States. Where, then, shall we find the natural workings of competition between cities and sections of country and railroad systems, which has been the life of our business? This natural competition has brought down freight rates to one-third what they were in 1870, and measured by the price of staple commodities they are cheaper now than ever before.

What is the necessity for haste in considering this important legislation? Is the business of the country in such desperate straits that we must rush through measures for relief? Are we unable to move the products of farm and factory by reason of oppressive freight rates? Is labor unemployed? None of those things is true. The wave of prosperity which came in with Republican policies in 1896 is still in full flood. Labor is fully employed at high wages. The farmers of the West have grown rich compared with their condition ten years ago. The manufacturing plants of the country are turning out their products and shipping them to market at a much greater return upon their capital, I believe, than the stockholders of railroads are receiving. Our foreign trade is still at record figures. We are looking forward to four years more of prosperity. The great party to which we on this side belong has been intrusted with four years more of power upon the promise that we would continue the policies by reason of which this prosperous condition has come to us as a people. There is nothing in sight threatening to disturb this condition unless it shall be radical legislation by Congress which shall cause alarm among business men. We have refused to revise the tariff at present, although it is admitted that some of its schedules could be revised to advantage, because we are afraid that the losses arising from disturbing business would be greater than the benefits of revision.

Why, then, is it necessary, in such feverish haste, to rush through legislation affecting one-sixth of the taxable property of the country, along lines which many of our people regard as socialistic and confiscatory and which is not at all necessary to regulate the evils complained of? [Applause.]

Mr. HEPBURN. Mr. Chairman, I now yield to the gentleman from Ohio [Mr. KYLE].

Mr. KYLE. Mr. Chairman, I desire to take issue, at first, with the remarks which were just made by the gentleman from New York [Mr. VREELAND], who declares that this is no Republican doctrine. There has come up from this whole country, confined to no particular locality, a demand from the whole people that something shall be done. The Republican party was born to do just that kind of work, and its initiation into politics and to the great arena was to do something for the people who, thoughout the length and breadth of the land, said that there was a wrong that must be remedied. It has been in that business from the day of its birth down to now. First, it rid the country of human slavery. It resumed specie payment. The people asked for it, the people wanted it, and the people demanded it. It did another thing. It established a tariff rate in this country that was a protection to American industries.

The people asked for it, the people wanted it, the people have prospered by it, and the people like it. It established sound money. It now hears a cry that goes up throughout this whole land, "You do something for rate legislation;" and to the gentlemen on the other side who believe that there was a Daniel who would lead the Democratic party to success with this as an issue, let me say that no Daniel by name, no particular man in the Republican party, offers, expects, intends, or believes that he can do it; but the people, having confidence in the Republican party while they are in power, have turned to them now, and they expect, they believe, and they know that something will be done for them. [Applause.] So, my friends, it is a Republican issue. Whether or not it has ever been announced in a political platform, I say to you that the people expect us to do it, and there is every reason why we should do it. Now, our friends upon the other side profess to believe that legislation ought to be enacted of a different character and a different kind than that proposed in this bill. I do not understand what they would read into it, I do not understand what they would read out of it, but I do believe that to accomplish that now we must arrive at a consensus of opinion to bring about that which the people would have us do.

Many bills were before the Interstate and Foreign Commerce Committee, and hearings upon all these bills were had at one time, and it was after the fullest and most complete and exhaustive hearings on both sides of this great question that this bill was finally evolved. No Daniel made it; no particular man made it; it was the result of the belief of this committee that had been arrived at after they had had these hearings now for two sessions of Congress, and this bill now provides, it seems to me, that which the people of this country ask and expect and believe that Congress will do. What? Not restore to but give to the Interstate Commerce Commission the right to determine that when a rate is fixed it should be just, reasonable, and fair. What more do you want? "Why," the gentleman said, "you have destroyed the good result that would come from that by giving to a court that you expressly establish the right to review it." I do not believe that he would contend for a moment that that right does not exist now.

If a rate that was fixed was a confiscatory rate would that shut off from the court those who are engaged in transportation? There is not a man, I care not how ultra he may be in his position, or how much he may feel that the railroads impose upon the people of this country, that would take away from them, if he could, that right that was given to every man when he was born, that right which is guaranteed to every citizen of the United States. You do that toward him or against him which tramples upon his rights, he can resort to the courts and they are open to him at all times and under all circumstances. So that if the rate made here was a confiscatory rate the courts are open to him to apply for and receive an injunction to restrain the carrying of that into effect. Now, the right is given in this bill to the Interstate Commerce Commission upon complaint to review and determine whether a rate is just and reasonable, and if they find it is not then the party aggrieved may within a certain time apply to the courts for a review of it. What right does that give to him additional to the right that he already had except that, for the purpose of expediting the business and in order that it may be reached more quickly, it says that this court so established shall meet in the city of Washington four times each year, and shall continue in session until its business shall have been performed.

One of the greatest complaints heretofore has been that there has been no court open or accessible to which litigants might go for the preservation of their rights. That has been avoided by this bill. It has established a court easy of access, to be located here for four terms a year, and in such other places as the majority of the court sitting may deem best in order to expedite the business. Now, what further do you want? What further would you put in a bill? You would not take away from them the right to go to a court at all. You could not. If you would not do that, then you would give to them a court that should hurry the business, not unduly, but take care of it as it came to the court, and after this court had heard it you would not take away from them the right to proceed further, because they have that right given to them, too. So if the rate-making power is given to the Interstate Commerce Commission, and the power is given to establish a court that will hear the complaints on review from this rate that is so fixed, it seems to me that you have given everything that the people ask for. It seems to me that there is nothing left that you could do unless you were so pronounced in your views against railroads and the business of railroading, except that it be owned by the Government, that you would deprive these people of the right to which they are justly entitled. No one would take away from a citizen of this country or a corporation that right which the Constitution gives him or it, that right which it secures for him or it and keeps for him or it just as sacredly as it keeps it for each and every single one of its citizens.

Mr. SHULL. I would like to ask the gentleman from Ohio [Mr. KYLE] a question. Is the court provided for in this bill a court in equity or an appellate court, or both?

Mr. KYLE. It seems to be both.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. KYLE] has expired.

Mr. HEPBURN. Mr. Chairman, I yield to the gentleman from Iowa [Mr. LACEY].

Mr. LACEY. Mr. Chairman, we have just finished the electoral count, and the announcement has been made of the election of President Roosevelt by the most unparalleled majority known in the history of the United States. We suspended the debate upon this bill during that count. We have again resumed it, and the first great proposition of the present session, in the expiring days of the Fifty-eighth Congress, is to make some just arrangement along the lines of his recommendation in regard to inequalities and discriminations in railroad rates. For ten years under the interstate commerce law it was generally believed by the railroad companies and by the people that the right to fix a rate by that Commission after the railroad rates had been held to be unjust or discriminatory existed. The law worked better then than it did afterwards. It did not confiscate anybody's property. It created no very serious disturbance in the affairs of carriers and shippers. The proposition now is to give or restore to that Commission the power that it was held was not embodied in the old interstate commerce law. That is practically all there is in this bill.

Mr. GAINES of West Virginia. Will the gentleman from Iowa [Mr. LACEY] permit a question at this point?

Mr. LACEY. In one moment.

Two great caucuses have met, one of the Republican party, agreeing upon the draft of a bill to accomplish this purpose;

another, the Democratic party, to accomplish what they claim is the same general purpose; and upon these two bills we will have to vote under the rule under which this debate is progressing. A direct vote on each of these propositions will be the first step in the proposed legislation.

Mr. GAINES of West Virginia. It has been stated on the floor during this debate that the Interstate Commerce Commission for ten years exercised the power of fixing the rate upon a case made, and that proposition has also been denied. It has been stated that Judge Cooley himself declared that the Commission in the very outset had no such power, and it has been stated that Judge Cooley himself cooperated with the Commission in fixing rates. While the gentleman from Iowa [Mr. LACEY] is on that subject, and knowing that he, perhaps, will be as likely as anyone else to be able to elucidate it, I would like to ask him if he knows about the fact?

Mr. LACEY. I do not propose to stop now in order to discuss that question with my friend from West Virginia [Mr. GAINES]. I only assume what has substantially been conceded, that it is a fact. If I were to go into the details of that discussion, it would take too much of the brief time allowed to me. They made orders fixing a rate, and it was supposed that they had that power. Now, even if they never had that power, the question is whether it ought to be given to them, and I will discuss it from that broader standpoint. If it ever had, or assumed to have, that power, and it worked well, that is only an additional reason why we should give it now. We have two propositions, of both parties, each one to be voted upon, and I will make the prophecy now to my Democratic friends that, after the Davey bill has been denied the privilege of being substituted for the Townsend-Esch bill, they will all, or nearly all, vote for the Townsend-Esch bill. Substantially all. There might be some of you who would refuse, but there will be very few.

Mr. SHACKLEFORD. Will the gentleman allow me to ask him one question?

Mr. LACEY. I have but little time, but I will yield to the gentleman.

Mr. SHACKLEFORD. By what authority does the gentleman claim that there is any bill here that we are to be allowed to vote on that has received the sanction of the Democratic caucus?

Mr. LACEY. Only from the common reports in the newspapers. A Democratic caucus or a Republican caucus is very much like an executive session in the Senate. The fact that it is an executive session only adds interest and certainty to the accuracy of the information in the newspapers concerning it.

Mr. SHACKLEFORD. Why, there was no secret, and it was generally known that no bill was adopted, but only some principles.

Mr. LACEY. There is the orphan bill, known as the "Shackleford bill." [Laughter.] It was not indorsed by the Democratic caucus, I am very credibly informed; and I will yield to my friend to say whether it was or not.

Mr. SHACKLEFORD. All the principles——

Mr. LACEY. The silence is audible.

Mr. SHACKLEFORD. All the principles declared in the Democratic caucus and adopted by it were contained in the "orphan bill," as you call it, and two-thirds of the membership on this side of the House are ready to vote for it.

Mr. LACEY. Under the proceedings in this House, with 386 Members, with every item of the bill fought over in the Committee of the Whole and voted upon, there is no question but that the result would be to greatly tend to defeat this legislation. The committee having this matter in charge has been earnestly working from the first day of the present session of Congress trying to get a bill in form upon which they could agree and which could receive a favorable action of this House. I intend to vote for the measure as proposed by them and in the form in which it received the indorsement of the Republican party. Every man upon this floor no doubt has his ideas as to some particular point in which the bill might be modified and, at the same time, improved. Our legislative experience has taught us that all legislation must be the result of more or less mutual concession. The vital question involved in the bill is that feature which gives the Interstate Commerce Commission, in cases of controverted rates, the power to determine what the rates should be, if it finds that unjust or discriminatory rates have been established. This vital point in the legislation is embraced in the bill of the majority of the committee. The other matters to which I call the attention of the House are matters of detail.

We are going to vote upon two propositions to-morrow, and I want to say to this committee, Mr. Chairman, there are some defects in the Townsend-Esch bill to which I desire to call attention.

Mr. TALBOTT. Why did you not have it amended?

Mr. LACEY. We have had a caucus. [Laughter.] We have agreed upon this general proposition, just as you have on that side of the Chamber.

Now, let me make a suggestion. This bill carries forward, without material change, what I think is a blemish in the existing law, namely, that the Interstate Commerce Commission has the right and the duty devolves upon it to be a prosecutor and prosecute violations of its own decisions. I do not believe that any commission, under any judicial or legislative method of procedure, should ever perform the duties of prosecutor; I think it would be much wiser and effectual to place this wholly in the hands of the Department of Justice, and give them not only ample power but plenty of money to carry out the legal proceedings with the same vigor that the Attorney-General has prosecuted the beef trust and other violations of our laws.

Mr. SIBLEY. Will the gentleman yield to a question?

Mr. LACEY. I yield to the gentleman.

Mr. SIBLEY. Then you are one of those who believe it is possible by amendment to make this a better measure?

Mr. LACEY. I think that my friend from Iowa [Mr. HEPBURN], who has charge of this bill, wisely said that any one of us, "in his mind, could draw a better bill, but that he could not get many others to agree with him upon it." I am only suggesting where I think the law can be improved and strengthened. I would have the prosecutions under the law in the hands of the Department of Justice, and give them ample money to carry out the prosecutions under it.

Now, another point, and that is the power to more readily change these schedules. In this bill it is provided that the schedules can be changed by the Commission "pending an appeal upon a review," but not afterwards. That involves a difficulty of administration. While I propose to vote for this bill, I think that any defects in it ought to be pointed out. It is impossible, from a parliamentary standpoint, to do otherwise than to agree upon some specific bill and then vote upon it.

We can not stop in Committee of the Whole this late in the session and commence to pick out flaws in such a controverted question and attempt to amend them, because no two men will agree upon any one new proposition. I believe though that it is my duty when I think I see places where the bill could be improved or strengthened to call attention to the fact, and the points to which I do call attention would improve the bill. There should be some provision in the bill by which the Commission could change or permit a change in the rate after adjudication. Let me illustrate. Last year 162,428 changes were made in freight and passenger schedules and the changes filed by the carriers with the Commission. One hundred and forty-three thousand nine hundred and eighty two of these changes were in freight schedules and 18,446 in passenger schedules, an average of over 500 changes a day. Now, these changes might well go on in future and most of them be just and proper. Under this bill you can make the change until it shall have reached the judicial stage of a decision of the court. After that the rate becomes immutable. It is fixed. It is like the laws of the Medes and Persians—unalterable. There should be some modification by which these schedules might still be much more easily changed when found unjust and unreasonable, even after judicial determination or judicial decision.

Let me illustrate further. We had a great fire in Baltimore. They changed the freight schedules upon food supplies and upon the materials to build the new town. There was a great flood in the South, covering parts of Louisiana and Mississippi. The freight schedules were changed in order to encourage the shipment of supplies into the stricken communities. The same thing occurred in Chicago after the fire. Now, those, of course, are extreme cases, but there are other common cases. We have a great crop one year and rates are based upon an enormous shipment. One year we ship the corn from Iowa east, and it goes to Europe. The next year, perhaps, we ship it to Kansas or Nebraska or farther west, where the crops may have failed. The supplies go one year in one direction, and in another the next. These varying conditions necessarily require that there should be some elasticity in the arrangement of rates. The fact that the companies now, under existing conditions, make an average of 500 rate changes a day shows that there should be some elasticity.

I think this bill could be strengthened and not weakened by giving even more power to the Commission than is given to it by allowing it to modify the rates even after they have been established by a judicial decision.

The main purpose of this bill is to prevent unfairness and discrimination in the treatment of individuals and localities. I shall vote for the bill, and believe that it in almost every respect meets the demands of the people and the suggestion made by the President in his message. There are some points upon which I think it might be strengthened, and in calling

attention to these I do not do so in any spirit of hostility to the bill, but in the desire to in the end have it more perfect.

Mr. SIBLEY. May I ask my friend a question?

Mr. LACEY. I always yield to my friend from Pennsylvania.

Mr. SIBLEY. Because I have great faith, as we all have, in his legal knowledge, I should like to have him explain what it means where it says:

Declaring any existing rate for the transportation of persons or property—

Right in the very beginning of the bill—

or any regulation or practice whatsoever affecting the transportation of persons or property.

Would not that provision permit them to determine how many trains each day a railroad should run, what rate of speed it should maintain, or even go to the extreme of prescribing the rate of wages? Is there any limitation whatever on the power of the Commission?

Mr. LACEY. There is no such purpose involved in the bill. You might as well say that it should require the use of a particular kind of fuel to be used, whether oil, coal, or wood. Of course the proposition here is one of rates. It is a question of unjust and unreasonable and discriminatory rates. The complaint is a very simple one in the main. Usually it comes from communities. For instance, the statement made by the gentleman from Illinois the other day that the rates from Boston to Montgomery, Ala., were 30 cents a ton lower than they were from Chicago to the same place, although the distance was 700 miles farther, is a sample case.

Now, this is a discrimination against a locality. A discrimination sometimes comes up against an individual, and most of these matters are amicably adjusted. When a case is submitted to the Interstate Commerce Commission upon the conflicting claims of the railroad on one hand and of the shipper on the other, ordinarily the Commission says what ought to be the rate, and it is accepted. It is only in some instances where the action of the Commission is ignored by the carrier. But there are instances where the carrier absolutely refuses to recognize a decision of this kind, and there is no power to enforce its decision, except to go into a court of justice and compel by mandatory injunction the carrying out of the decision of the Interstate Commerce Commission.

The proposition now is to allow the decision of the Commission to be presumed to be right and binding upon the parties. It shifts the burden onto the person or corporation attacking the decision of the Interstate Commerce Commission.

Mr. FITZGERALD. The gentleman has been pointing out the defects in this bill.

Mr. LACEY. I would not say defects; I would say omissions rather than defects.

Mr. FITZGERALD. Omissions—places where it could be improved. Now, this House is denied the opportunity to attempt even to improve it. Is it the gentleman's purpose to attempt to direct the attention of some other body to these omissions, so that it will correct this bill? And if that be true, ought not this speech to be made in some other place?

Mr. LACEY. If my friend will bear with me, the speeches made in this body are not often read in any other place. They go into the CONGRESSIONAL RECORD, which is the tomb of oratory, and many of the remarks upon this question will no doubt be consigned there, possibly without the hope of resurrection. [Laughter.]

Mr. SIMS. May I ask the gentleman one question only?

Mr. LACEY. My time is almost out.

Mr. SIMS. Does the gentleman have the slightest fear that this bill is going to pass and become a law during this Congress, so as to cut off the opportunity of improving the bill?

Mr. LACEY. I certainly hope for legislation during the present session. The House will do its part by the prompt action proposed.

The assignment of five official judges for hearing cases growing out of this proposed act will greatly expedite the final determination of litigation arising in regard to rates. If the litigation were allowed to take its ordinary course, going through the slow processes of the different courts of nine circuit courts of the United States, not only would there be endless delays in the proceeding, but numerous conflicts in the decisions of the different courts as to the meaning of the various parts of the law. We have many evidences of this in the court reports of the Federal decisions in different parts of the Union. One court will construe a statute as meaning a certain thing, another court will take a different view of the same act, and in the end the Supreme Court must solve the controversy. Under the provisions of this bill the decisions of five judges especially selected and detailed for this work will, of course, be more uniform. The criticism has been made on this feature of the bill that it provides for delay. Exactly the opposite is true. It provides for the least possible delay in the final determination of all controversies.

The vital question in dispute is fully covered by this bill.

Mr. HEPBURN. Mr. Chairman, I now yield to the gentleman from Minnesota [Mr. DAVIS].

Mr. DAVIS of Minnesota. Mr. Chairman, I wish to preface my remarks on this subject by saying that I shall endeavor in all ways to avoid political partisanship, for the magnitude of the question under consideration and its far-reaching results should appeal to all, regardless of party fealty. To my mind it is one of the greatest questions that has been brought before a legislative body for many years, and the results of Congressional action at this time will have more to do with affecting the welfare of the people of the Republic than any previous legislation in many years. All branches of industry to a greater or less degree are involved. Hence conscientious action should be had irrespective of locality or party affiliation.

Ever since the question of railroads and common carriers concerning transportation of persons and property became one of the leading factors in our industrial system, until the passage of the law entitled "An act to regulate commerce," which went into effect April 5, 1887, these common carriers have virtually exercised a free hand in the imposition of charges, regulations, and practices in their dealings with the public. Very little, if any, supervision by the Federal Government or by any of the States was imposed or attempted. During this time I believe I am warranted in saying that the accumulated wealth and general prosperity of transportation companies increased more rapidly than any other industry in the United States. Mr. Chairman, in building up this system of transportation, which to-day in the United States excels both in magnitude and quality all else in recorded history, our Government has at all times extended munificent aid and bounty. Large areas and grants of public lands, aggregating millions of acres, have been freely given to aid in construction. Almost every municipality into and through which a new railroad was sought to be built has taxed its citizens in order that bonuses might be given in this behalf.

For several years just preceding the passage of the "act to regulate commerce," in 1887, murmurings of dissatisfaction became quite prevalent throughout the length and breadth of this land that these transportation companies were dealing unjustly with the producer and shipper; that excessive rates in many instances were charged; that discriminations between localities were numerous; that the small shipper was compelled to pay freight charges far in excess of those imposed upon the larger ones, thus placing the small shipper, comprising the many, at a serious disadvantage, in order to compete with the larger ones, which mainly comprise the wealthy corporations, some of which are monopolistic in tendency.

In consequence of all this, agitation began in the public press and otherwise until finally Congressional aid was invoked, resulting in the act of 1887. In my judgment it was intended by this law that the Interstate Commerce Commission, as therein established, should have the power, upon application made, not only to declare any given rate unjust and unreasonable, but upon such finding to further declare what should be a just and reasonable rate to be charged in the case under consideration. My information as to the workings of this law is somewhat meager, but it has been repeatedly stated upon the floor of this House during the present discussion that from the year 1887 until 1897 the power of this Commission to determine what should be a reasonable rate in a given case was assumed, and not seriously questioned. However, in the year 1897 the Supreme Court of the United States, in what is known as the "Maximum Rate Case," having the question for the first time fully presented to it, decided that the law of 1887 did not confer upon the Commission any power whatever to fix a new rate in lieu of the one determined to be unreasonable and unjust. It will be observed that by this decision the establishment of any rate whatever was wholly eliminated from the supposed power of the Commission in this regard. Hence this law was totally inadequate to remedy the ills which existed in the form of excessive rates, discriminations, rebates, etc., and it is the purpose and intent of the Esch-Townsend bill, now under discussion, to cure, if possible, the now known defect in the previous law.

I am fully aware of the magnitude and importance of our great system of railways, and do not desire in the least to detract from the benefits which the country has derived and is now deriving therefrom. This system for many years past has been and still is the greatest factor in developing the wealth, industry, and progress of our country. It has been the means of developing the Middle West, the great Northwest, and that vast

stretch of country known as the "Pacific slope." Thousands of miles of heretofore unproductive waste lands have become peopled by thrifty and patriotic American citizens. Vast plains are now being grazed by all kinds of domestic herds. Millions of acres are annually being furrowed by the best brawn of civilization, yielding untold wealth and happiness. The mighty forests heretofore unapproachable are now being converted into such form as to benefit our whole people and transported into the uttermost parts of this Republic. In fact, civilization is greatly indebted to this mighty system of railway transportation, which at present consists of about 210,000 miles of the best-equipped and best-managed railroads in the world. Sir, this system of transportation and the people are interdependent and should work in harmony. The people have in all ways done their share. They have treated the railroads fairly and bountifully, and they insist—yea, at this time, demand—corresponding treatment at the hands of the mighty corporations brought into existence by Government authority and nurtured by them. But are they receiving fair treatment? The answer to this question comes with great force at this time from almost the entire mass of the people that they are not. Various State legislatures have recently memorialized Congress asking for the passage of Federal laws for greater control over common carriers engaged in interstate commerce. Petitions from hundreds of commercial organizations have been recently sent to Congress praying for relief against what they term extortionate rates, rebates, and unjust discriminations between localities and individual shippers. All of these memorialists and petitioners are apparently united in the one form of remedy—that is, that the present Interstate Commerce Commission be given power, in addition to that already possessed, of determining, in a given case, what is a reasonable rate to be charged and what is a proper and just practice and regulation to be followed by the carrier in the matter of transportation of property; that when so ordered and determined by the Commission the same shall at once go into effect and become operative and so remain until set aside upon review by a competent court. To-day, Mr. Chairman, we have witnessed in this Chamber the grand spectacle unknown in any other country but ours—of the official counting of the electoral votes which declared the election of our Chief Executive for the ensuing four years. This was done without pomp or parade, but in the simple and unostentatious manner befitting a free and mighty people. To-day's proceedings further emphasize the fact that 80,000,000 of people, or a large majority thereof, are satisfied with the previous record of Theodore Roosevelt, and they willingly place in his hands the rudder to further guide our ship of state. [Applause.]

It is seldom, if ever, that this Republic has been blessed with a Chief Executive more wise or more earnest in his zeal to protect the welfare of our people than the present occupant of the White House. The people have shown their faith in him so overwhelmingly that I for one believe their confidence is merited. On all occasions heretofore his response to their just demands has been ready and electrical. To-day the people are demanding with great unanimity a remedy for the evils now existing in transportation matters. Their appeals to the carriers have been without avail, but not so with our President. Mr. Chairman, in his last annual message to Congress the President suggested and recommended as follows:

> We must strive to keep the highways of commerce open to all on equal terms; and to do this it is necessary to put a complete stop to all rebates. Whether the shipper or the railroad is to blame makes no difference, the rebate must be stopped; the abuses of the private car and private terminal tracks and sidetrack systems must be stopped; and the legislation of the Fifty-eighth Congress which declares it to be unlawful for any person or corporation to offer, grant, give, solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce, whereby such property shall, by any device whatever, be transported at a less rate than that named in the tariffs published by the carrier, must be enforced.
>
> While I am of the opinion that at present it would be undesirable, if it were not impracticable, finally to clothe the Commission with general authority to fix railroad rates, I do believe that, as a fair security to shippers, the Commission should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place, the ruling of the Commission to take effect immediately and to obtain unless and until it is reversed by the court of review.

Continuing the message he said:

> The Government must in increasing degree supervise and regulate the workings of the railways engaged in interstate commerce; and such increased supervision is the only alternative to an increase of the present evils on the one hand, or a still more radical policy on the other. In my judgment the most important legislative act now needed as regards the regulation of corporations is this act to confer on the Interstate Commerce Commission the power to revise rates and regulations, the revised rate to at once go into effect, and to stay in effect unless and until the court of review reverses it.

These statements of the President are plainly and concisely uttered and admit of no double meaning, and are indorsed and approved almost universally by the people generally. In fact there is scarcely any division of sentiment on the question. The small minority against it, in my judgment, is confined chiefly to those who own and operate transportation lines or those others who are unjustly favored thereby.

For nearly three-quarters of a century the principle has been affirmed by Federal and State courts that railways are public servants in so far as the use of the utilities at their command is concerned; that in their treatment of individuals and communities, as far as conditions permit, the common carriers should be just and equitable; while, on the other hand, the carriers are entitled to receive reasonable compensation for services rendered. The Constitution of the United States, section 8, clause 3, of article 1, provides that Congress has the power to regulate commerce with foreign nations and among the States, and in the case of the Wabasha, St. Louis and Pacific Railway Company *v.* State of Illinois (118 U. S., 557) it was decided that transportation between the States by railways is commerce among the States. Again, in the case of Ferry Company *v.* Pennsylvania, reported in 114 United States, the statement of Judge Cooley to the effect that the United States Government has the power to go beyond general regulations and even into the minutest details is adhered to and quoted with approval; that railroads are public servants and subject to legislative control is clearly enunciated in the case of Louisville and Nashville Railway Company *v.* Kentucky, reported in 611 United States, page 67, and that Congress can delegate this legislative control over interstate traffic to a commission is affirmed in Kentucky Bridge *v.* Louisville and Nashville Railway Company (37 Fed. Rep., 567).

It therefore seems there is no question but that Congress is constitutionally authorized to fix and establish rates for the transportation of all commodities between the States, and to regulate and control the practices and conduct of the carrier engaged in interstate commerce, and also that this power can be lawfully delegated to a commission created by it. I am fully aware that any rate fixed, or any rule or regulation established by or emanating from the Congress, or its duly delegated commission, must at all times be subject to the constitutional test as to whether its enforcement would deprive anyone of property without just compensation. In other words, it should in no manner be confiscatory. Courts of our land are always open and fully empowered to prevent any violation of this constitutional right guaranteed to all.

During the course of this debate recently within this Chamber solicitude has been voiced by some in behalf of the carrier, that its property would be confiscated by means of an inadequate rate charge fixed by this Commission. It is no doubt a fact and can be easily shown that in many instances during previous years the shippers and producers have been obliged to pay unjust and excessive transportation charges, and are continuing to do so; that in consequence thereof vast sums of money have been transferred unjustly to the coffers of the carrier. Is not this confiscation of the shippers' and producers' property and from which there has been no escape, and for which no compensation or return has been made? Does the word "confiscatory" apply only to the property of the carrier? It may be urged, however, that the shipper voluntarily entered into the contract, and hence should not be heard to complain. In a certain sense perhaps this is true, but owing to the existing fact that all transportation facilities at this time are controlled by a few and that the producer and shipper must of necessity patronize the carriers or be driven from business, therefore this contract is not only born of necessity but is entered into under duress, whether just or not. Therefore this word "confiscatory" applies equally to shipper and carrier alike. [Applause.]

Mr. Chairman, I shall not enter into detail or attempt to encumber the RECORD with statistics showing the number and variety of unjust rates or discriminations, either as to locality or individuals, although in my own State and in my particular district numerous instances might be cited which show that the rates have not been made upon the basis of what it costs to haul the freight, but apparently to suit the fancy of the traffic manager. Suffice it to say that unjust rates and discriminations in various forms do exist throughout the length and breadth of our land. That the same should be corrected by some power and in some form and speedily is the desire of all. That the existing law is inadequate to properly deal therewith or with the various systems of rebates which are given, either in the form of the private car, the private switch, or terminal facilities, or otherwise, is conceded. Therefore, Mr. Chairman, in view of this existing conditon of affairs, is it not our duty to act speedily, and endeavor, if possible, to remedy some, if not all, of these evils?

An indignant people has urged us by all lawful means in our

power to immediate action. Our President in forceful language has besought us to grapple with this great problem, and this Congress, apparently conscience stricken and fully aware of its duty to the public, is now seeking in a deliberate and sensible manner to enact into law a conservative and just measure that will remedy some, at least, of these known evils. The present bill, which is now under discussion, we are assured by its authors, will accomplish the purpose sought, and I sincerely hope it will and shall vote to pass the same. No doubt there are some defects contained in it. Time will demonstrate of what these defects consist, and a remedy can then be applied by way of subsequent legislation. I am fully aware of the impossibility in framing any legislation that will meet the individual views of all the members of any legislative body. We are all too prone to think that "our bill" or the one which we have in "our minds" is the only one that should be passed. But if legislation is delayed until the happening of such an event Congresses would assemble and adjourn without results. The spirit of compromise must and should prevail.

I desire to express my views upon some of the various sections of this bill and endeavor to show that much good will be accomplished as the result of its enactment into law. Section 1, no doubt, properly authorizes the Commission to declare a given rate unreasonable if the facts so warrant, and to fix and establish a reasonable one in lieu thereof. It also authorizes an inquiry into and declaration that any regulation or practice in force is unreasonable, discriminatory, or unjust. It likewise authorizes the Commission to substitute a reasonable and proper regulation or practice therefor, which rate, regulation, or practice shall become operative within a reasonable time thereafter. Without asserting to the contrary and with no spirit of criticism, the question might be asked, Does this section empower the Commission to interfere with the acknowledged abuse which exists concerning the use of private cars, private side tracks, and terminal privileges? This question has been answered by the framers of the bill in the affirmative and, I hope, correctly. However, to my mind it is not so specifically stated or placed beyond cavil that litigations will not arise before it is definitely settled. More apt phrases could have been used to place this phase of the question beyond doubt, and possibly the Senate, in its wisdom, may so amend it.

Section 7 establishes a new court of record with full jurisdiction in law and equity, called a "court of transportation." The establishment of this court is for the specific purpose of having instituted therein certain proceedings to review and determine, not only the lawfulness, but the justness and reasonableness, of every order promulgated by the Commission. Apparently greater powers are attempted to be given this court than other Federal courts possess. The well-established principles of law governing Federal courts, while acting in review, are, in my judgment, ample to meet all the requirements necessary to safeguard the interests of litigants, and these well-established powers are all that are necessary, and none other or greater should have been given to this transportation court.

It frequently occurs that the granting of extraordinary powers sometimes defeats the object sought to be attained. In this particular case the findings of fact by the Commission as to the reasonableness of a rate fixed by it should be treated the same as the findings of fact by a jury, and should not be disturbed by the court of review, except wherein the order based thereon would produce confiscatory results. In other words, two juries should not be specifically provided for to try the same questions of fact, as is attempted to be done under this bill, wherein the power to review the question of reasonableness is given to the transportation court. I do not wish to be understood as positively stating that this bill commands the court to review the question of reasonableness of rate other than for the purpose of ascertaining whether it would be confiscatory, but it seems to me that the wording of some of the provisions of the bill lean in that direction. Again, Mr. Chairman, I desire to call the attention of the House to that portion of section 2 of the bill, beginning on line 22, which reads as follows:

Provided, That any rate, whether single or joint, which may be fixed by the Commission, under the provisions of this act, shall for all purposes be deemed the "published" rate of such carrier and subject to the provisions of an act entitled "An act to further regulate commerce with foreign nations and among the States," approved February 19, 1903.

It will be observed that this proviso specifically says that any rate fixed by the Commission shall be deemed the "published" rate of such carrier, and subject to the provisions of the act of 1903. Therefore we must examine this act of 1903 in order to determine the status of the rate as fixed by the Commission. In this act of 1903 the "published" rate can be changed by the carrier after ten days' notice to the Commission, if an advance is desired. Such being the case, if we enact this proviso, would not the rate as fixed by the Commission, under the provisions of this bill, be subject to change and advance at any time after ten days, if the railroad companies so desired, simply by giving notice, as provided in the act of 1903? I simply call attention to this proviso in order that the matter may be considered in the future. In my judgment this proviso is dangerous in that it leaves the order of the Commission and the rate fixed thereby solely in the hands of the carrier, to change at will without legally showing any just reason therefor.

I have been very much impressed with the masterly presentation of the features of this bill by its authors, and I fully agree with them in their contention that the main object of this legislation is to extend the power of the Commission sufficiently to enable it to fix rates in given cases and put the same into effect; also to determine and order what shall be just and reasonable rates, practice, and regulations to be charged, imposed, and followed in place of those found to be unreasonable or unjustly discriminatory, and that when these rates, rules, and regulations are so determined upon the same shall be and remain of force until set aside by a competent court. And I am impressed with the belief that the object as thus stated can be enforced and maintained under the provisions of this bill. The gentleman from Michigan [Mr. TOWNSEND], after his careful study and research, and having had the benefit of all the arguments presented at the various hearings before the committee, assures us of his reasonable certainty that there is nothing contained in the bill that will thwart or defeat its main purposes, and I for one am willing to accept his judgment. He further informs us that in its main features this bill meets the views and has the approval of the President. Therefore it should be adopted, coming, as it does, recommended by such eminent authority. In matters of legislation upon subjects of great magnitude, like the one under discussion and those pertaining to revision of tariff schedules, a spirit of compromise must prevail in order to accomplish any results whatever. The varied interests of our people, extending from coast to coast, are such that they of necessity have divergent views upon all great subjects, influenced perhaps by their individual interests, and therefore one man or class of men should not attempt to enforce upon all others their particular views. Therefore I trust that any statement I have made in regard to any particular line or sentence contained in this bill will not be considered as hostile thereto. My only object in calling attention to some possible or apparent defects has been made in a kindly spirit and for the purpose of possibly aiding in strengthening this measure.

It has been repeatedly urged upon the floor of this House that this proposed legislation is too drastic in that it places in the hands of a few men the power to bring ruin and disaster upon the railroads in particular, and would be very detrimental to all other interests, industrially and commercially. But, sir, the people demand nothing unreasonable, and their petitions have been solely for the purpose of securing that, and that only, which is just and reasonable. They do not insist upon placing this rate-making power in the hands of fanatics, or in the hands of those who will seek to do injustice to anyone, and I am constrained to believe that the present Commission, or any other that may hereafter be substituted by the Chief Executive of this nation, will not exercise their power other than wisely and discreetly, or with any intent or spirit except to promote the interests of all through justice and fair dealing. [Applause.]

Mr. HEPBURN. Mr. Chairman, I yield to the gentleman from Kansas [Mr. MURDOCK].

Mr. MURDOCK. Mr. Chairman, in spite of the fact that many of the lawyers here seem muddled about this bill, duly deferring to the fact also that all railroads will finally believe any commission unfair to them and biased against them, considering also that almost all shippers believe that many of the Federal courts have a bias in favor of the railroads, and concluding that, ultimately, if this bill become a law, the Supreme Court will say what it is, and what it shall do, and what it shall not do, I am upon the whole, pretty well satisfied with the Townsend bill, so for as it goes.

If there is anyone here who thinks that the passage of this measure, or the other—the Davey bill—would cause the agitation in freight-rate controversy to cease, he is mistaken. The controversy in this country, the match that kindles the fire, is the contest between competing markets, the war of the small market against the large, the protest of the intermediate points against disproportional charge, and these and the competing markets will not quiet, depend upon it, until another power is restored to the Commission and, specifically, the power over unjustly discriminating differentials.

TWO PROPOSITIONS IN TOWNSEND BILL.

This bill seeks to do two things. First, to grant to the Interstate Commerce Commission more power than it now has; sec-